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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1997

Addendum

ARGENTINA

[15 July 1998]

* By decision of the Human Rights Committee the symbol of reports will henceforth be simplified to indicate the initials of the States party, the year of submission and the number of the report.

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INFORMATION RELATING TO ARTICLES 1 TO 27 OF THE COVENANT

Article 1

1. The Argentine State fully guarantees the exercise of the right of self-determination, with respect not only to the whole population who make up the State but also to the autonomy of each person who forms part of the population. Thus, the Argentine people freely determines its political, economic and social regime. For their part, the various communities making up the Argentine people possess the instruments necessary in order to conserve and develop their culture.

2. This latter aspect has been strengthened by provisions that were incorporated into the Constitution with the reform of 1994. We shall report on this in greater detail in relation to article 27.

Article 2

3. The Preamble of the Constitution reads as follows:

> "We, the representatives of the people of the Argentine Nation, gathered in Constituent General Congress by the will and election of the provinces which compose the Nation, ... in order to ... provide for the common defence, promote the general welfare and secure the blessings of liberty for ourselves, for our posterity, and for all persons throughout the world who wish to dwell on Argentine soil."

4. In Chapter 1 of the Constitution, entitled "Declarations, Rights and Guarantees", article 20 states:

> "Foreigners enjoy within the territory of the Nation all the civil rights of citizens: they may exercise their industry, trade and profession; own, buy and sell real property; navigate the rivers and coasts; freely practise their religion; make wills and marry under the laws. They are not obliged to accept citizenship, or to pay extraordinary compulsory taxes."

5. As to questions relating to discrimination, it should be noted that the enjoyment and exercise of all the human rights protected under the legal system in force in Argentina are provided for in respect of all "inhabitants" of the Republic. As the Argentine Supreme Court of Justice has defined it, the term "inhabitant" covers both Argentine nationals and foreigners, and refers to persons residing in the territory of the Republic with the intention of remaining in it, even though they may not have established domicile with all its legal effects.

6. Under article 16 of the Constitution, all inhabitants are equal before the law. The Supreme Court has interpreted this provision to mean that the guarantee of equality before the law consists in establishing equal legal treatment for persons in largely similar circumstances. Consequently, this guarantee does not prevent the legislature from treating differently

situations which it considers different, provided that the distinctions are not based on arbitrary criteria, undue favour or disfavour, personal or class inferiority or privilege, or unlawful persecution.

7. As to the constitutional provisions which grant recognition to the rights protected by the Covenant, the incorporation of article 75, paragraph 22, in the Constitution represents a fundamental modification in relation to the information given in paragraph 44 of the core document (HRI/CORE/1/Add.74):

> "... treaties and concordats take precedence over laws. In the conditions of their validity, the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child have constitutional rank, do not abrogate any article of the first part of this Constitution, and shall be interpreted as complementary to the rights and guarantees recognized thereby. They may be denounced, if necessary, only by the Executive, following approval by two thirds of the members of each Chamber.
>
> After being approved by Congress, other treaties and conventions on human rights shall require the vote of two thirds of the members of each Chamber in order to acquire constitutional rank."

8. Thus the Covenant, since the 1994 reform, enjoys constitutional rank, does not abrogate any article of the first part of the Constitution, and must be interpreted as complementary to the rights and guarantees recognized thereby. The wording of this article, above and beyond what has been expressly recognized by the Argentine courts and the Supreme Court, shows with complete clarity the possibility of its being invoked before the Argentine courts.

9. The Supreme Court has handed down a number of relevant judgements:

> "G.H.D. et al./Application for judicial review", judgement of 7 April 1995:
>
> "The above-mentioned constitutional rank of the American Convention on Human Rights has been established by the express will of the drafters of the Constitution 'in the conditions of its validity' (art. 75 (22), second para.), in other words, as this Convention actually applies in the international sphere and considering, in particular, its effective jurisprudential application by the international courts competent for its interpretation and application.

Consequently, this jurisprudence must serve as a guide for the interpretation of the provisions of the Convention to the extent that the Argentine State has recognized the competence of the Inter-American Court to hear all cases relating to the interpretation and application of the American Convention.

Consequently, it is the responsibility of this Court, as the supreme organ of one of the powers of the Federal Government, to the extent of its jurisdiction, to apply the international treaties by which the country is bound in the above-mentioned terms, since any action to the contrary could incur the responsibility of the Nation vis-à-vis the international community.

...

It follows from the foregoing that the solution hereby adopted enables, from the standpoint of the guarantees of criminal proceedings, the human rights commitments undertaken by the State to be fully complied with."

"Monges, Analía M. v. U.B.A., decision 2314/95", judgement of 26 December 1996:

"The possibility that the responsibility of the State may be incurred for non-compliance with its international obligations is a serious one in terms of its institutions. It is, therefore, the State which has to ensure that internal provisions are not at variance with the relevant provision of the international treaty having constitutional rank."

10. The obligation undertaken by Argentina to ratify the Covenant has been fully complied with. In the cases in which measures have not yet been taken, the State is taking the necessary steps to this end.

11. Since the 1994 reform, article 43 of the Constitution makes provision for amparo and habeas corpus proceedings in the following manner:

"Any person may initiate prompt and rapid amparo proceedings, provided no other more appropriate judicial remedy exists, against any act or omission by public authorities or private individuals which actually or potentially infringes, restricts, jeopardizes or threatens rights and guarantees recognized by this Constitution, a treaty or a law in a manifestly arbitrary or illegal manner. In such instances, the judge may declare unconstitutional the provision on which the act or omission is based.

These proceedings may be initiated against any form of discrimination and in regard to the rights that protect the environment, competition, users and consumers, as well as collective rights in general, by the party concerned, the Ombudsman and associations that share those goals and are registered in accordance with the law, which shall determine the conditions and form of their organization.

These proceedings may be initiated by any person in order to obtain information about the content and purpose of data relating to himself contained in public or private records or data banks intended for reports, and, if the information is false or discriminatory, to demand that it be destroyed, corrected, made confidential or updated. The confidentiality of journalists' sources of information may not be affected.

When the right which has been infringed, restricted, jeopardized or threatened concerns physical liberty, in the event of illegal worsening of the form or conditions of detention, or in the case of the enforced disappearance of persons, habeas corpus proceedings may be initiated by the affected party or by any person acting on his behalf, and the judge shall hand down a decision immediately, even if a state of siege is in force."

Article 3

12. The constitutional reform of 1994 granted constitutional rank to the Convention on the Elimination of All Forms of Discrimination against Women and, in article 75 (23), added the following to the powers of Congress:

"To legislate and promote positive measures guaranteeing genuine equality of opportunity and treatment, and the full enjoyment and exercise of the rights recognized by this Constitution and by the international human rights treaties in force, particularly in respect of children, women, older persons and disabled persons."

13. Argentina submitted reports to the Committee on the Elimination of Discrimination against Women (CEDAW) on 6 October 1986 (CEDAW/C/5/Add.39), 13 February 1992 (CEDAW/C/ARG/2, Add.1 and 2) and 1 October 1996 (CEDAW/C/ARG/3).

Affirmative-action measures relating to women

14. Specifically in connection with the rights of women, there are various governmental agencies which cooperate in promoting and ensuring the exercise of these rights. By way of example the following may be cited:

Ministry of Foreign Affairs, International Trade and Worship, Office of the Under-Secretary for Women;

Ministry of Health and Social Welfare, Women's Health and Development Programme, run by the Office of the Secretary for Health. Programme for the Advancement of Women and the Family, run by the Office of the Secretary for Human Development and the Family;

National Council for Women. Set up in response to the recommendations contained in the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations. It is the institutional agency within the State responsible for implementing the Convention and achieving the maximum participation of women in all spheres for the purposes of full and complete national development.

15. Without prejudice to the constitutional provisions, which will be specifically mentioned in connection with the information relating to the relevant article, as an example of the foregoing particular attention should be drawn to Act No. 24,012 of 6 November 1991, which establishes a quota for women on party lists for representative offices. This Act was supported by the chairmen of the major parties. In order to ensure its observance, the Executive issued regulations relating to the Act in March 1993.

16. The above-mentioned Act provides for the effective inclusion of women in the lists of candidates for elective office submitted by the political parties. It stipulates that the lists submitted must contain at least 30 per cent of women candidates for the offices in question and contain women who have a realistic chance of being elected.

17. The Act applies to the submission of lists of candidates for national elective office and for the government of the City of Buenos Aires. Its aim is to achieve the effective involvement of women in political activity and to prevent their relegation to the sidelines by not including them among the candidates who may reasonably expect to be elected.

18. In accordance with general comment 4 of the Human Rights Committee concerning article 3 (thirteenth session), from the information provided in connection with article 24 of the Covenant it is apparent that in Argentina there are no differences on grounds of sex with regard to the acquisition or change of nationality.

Article 4

19. Article 23 of the Constitution states:

> "In the event of internal disturbance or external aggression which endangers the exercise of this Constitution and the tenure of the authorities established by it, the province or territory where the disruption of public order exists shall be declared under a state of siege, the constitutional guarantees being suspended therein. During such suspension, however, the President of the Republic may not pronounce judgement or impose penalties in his own right. In such cases, in respect of persons his power shall be limited to their arrest or transfer from one part of the Nation to another, if they do not prefer to leave Argentine territory."

20. In accordance with the Constitution, the Congress of the Nation is empowered to "declare under a state of siege one or more parts of the Nation in the event of internal disturbance, and to approve or suspend the state of siege declared, while it is in recess, by the Executive" (art. 75 (29)). The Constitution empowers the Executive to declare a state of siege "in one or more parts of the Nation in the event of external aggression and for a limited period, with the agreement of the Senate. In the event of internal disturbance it only has this power when Congress is in recess, because this power lies with Congress. The President exercises it with the limitations laid down in article 23" (art. 99 (16)).

Article 5

21. As part of the above-mentioned constitutional reform, the Constituent Convention convened for this purpose, its members having been elected by popular suffrage, decided to include under Chapter II, entitled "New Rights and Guarantees", the following article:

> "Article 36. This Constitution shall retain its precedence even if its observance is interrupted by attacks against the institutional order and the democratic system. These attacks shall be irreparably void.
>
> Their perpetrators shall be liable to the penalty established in article 29, permanently debarred from holding public office, and excluded from the benefits of pardon and commutation of sentences.
>
> The same penalties shall be imposed on persons who, in consequence of these attacks, usurp functions established for the authorities of this Constitution or the provincial authorities; these persons shall incur civil and criminal liability for their acts. The respective proceedings shall not be subject to prescription.
>
> All citizens have the right to resist persons perpetrating attacks as enunciated in this article.
>
> An attack on the democratic system shall also be constituted by any person who perpetrates a serious wilful wrong against the State which entails enrichment. He shall be debarred from holding public offices or posts for the period determined by the laws.
>
> Congress shall enact a law on public ethics to govern the exercise of public office."

22. The Defence of Democracy Act (No. 23,077) of 1984 introduced amendments to the Penal Code; it characterized the offence of unlawful association aggravated by the fact that action resulting from such association tends to endanger the validity of the Constitution.

Article 6

23. A number of cases in which violations of the right to life have been alleged have been heard by Argentine courts and, where appropriate, by international human rights bodies.

> Andrés Núñez: In 1990 in the city of La Plata, Province of Buenos Aires, this man's body was found and a judge ordered an autopsy. Eleven policemen were arrested, and three disappeared and are still fugitives from justice. They were charged with unlawful deprivation of liberty, and torture followed by death and concealment.
>
> Walter Bulacio: This minor was arrested in a police operation on 19 April 1991 during a rock concert in a stadium in the city of Buenos Aires. The next morning he was taken by ambulance from a police station to a public hospital. Seven days after his arrest, in a private

sanatorium to which he had been taken by his mother, he died. On 13 November 1992, the Sixth Division of the Court of Criminal and Correctional Appeal in Buenos Aires dismissed proceedings against a Federal Police officer who had been charged with causing injury, torture and death. The case went to the Supreme Court under the remedy of complaint for denial of special recourse, and on 5 April 1994 that Court, in a unanimous judgement, decided to rescind the dismissal and return the proceedings to the court of origin for a new trial. In March 1996, the court dealing with the case ordered a stay of proceedings for the offence of causing injury, torture and death of Walter Bulacio against police officer Expósito, and ordered the closure of the pre-trial investigation concerning the offence of unlawful deprivation of liberty in respect of the same officer, who is currently being held in pre-trial detention. In the latter proceedings, the public prosecutor has brought his charge on behalf of the 73 victims arrested on the night of 19 April 1991.

Garrido and Baigorria cases: A complaint was lodged with the Inter-American Commission on Human Rights concerning the disappearance of Adolfo Garrido and Raúl Baigorria, who were arrested in General San Martin Park in the city of Mendoza on 28 April 1990. The case, listed as No. 11,009, was brought before the Inter-American Court of Human Rights. After accepting the petition, the Government held a series of talks with representatives of the victims' relatives for the purposes of finding a solution and agreeing on appropriate redress and compensation. In its judgement of 2 February 1996, the Inter-American Court took note of Argentina's recognition of the events referred to in the petition and also its recognition of international responsibility for those events, and granted the parties a period of six months in which to reach an agreement on redress and compensation. By its judgement of 1 February 1997, and finding that the parties had not arrived at an agreement on that question since the representatives of the petitioners had challenged the amounts of compensation established by an ad hoc arbitration tribunal, the Inter-American Court decided to initiate proceedings on redress and compensation. These proceedings are under way.

Guardatti case: On 23 May 1992, Pablo Christián Guardatti was reportedly present, with a group of friends, at a dance held at a school in the La Estanzuela district of Godoy Cruz in the Province of Mendoza. According to witnesses, Guardatti got into an argument with a policeman who eventually handcuffed him and took him off to the local police station, which is near the prison. Since then nothing has been heard of him. On 30 November 1993, a petition was lodged with the Inter-American Commission on Human Rights.

By Decree No. 53/96 of 23 January 1996, the President issued instructions for an amicable solution to be sought in the Garrido and Baigorria cases and also in the Guardatti case.

Rodríguez Laguens case: The case was heard by a criminal court in the Province of Jujuy and resulted in convictions for police officers Italo Soletta, Juan José Zingarán and Rogelio Moules of that province.

They were sentenced to 16 years' imprisonment for the offences of abducting and murdering Diego Rodríguez Laguens in February 1994. In the same case, five police officers and a doctor were sentenced to two years' imprisonment for the offence of concealment. In addition, the court ordered financial compensation in the amount of 100,000 pesos (equivalent to US$ 100,000) to be paid to the victim's relatives.

Miguel Angel Rodríguez: In September 1995, the Seventh Criminal Court in Córdoba sentenced a policeman to eight years' imprisonment for homicide committed in July 1994.

Sergio Gustavo Durán: In October 1995, a police deputy-inspector was sentenced to life imprisonment for the offence of torture (with electric shocks) followed by death. The offence was committed in 1992 in the town of Morón, Province of Buenos Aires.

Julio Sosa: Concerns events in February 1995 in the Province of Mendoza. A policeman from that province has been charged with ordinary homicide and is in custody. Proceedings are continuing.

Javier Rojas Pérez: Concerns events in July 1995 in the town of Wilde, Province of Buenos Aires. A policeman has been charged with ordinary homicide.

Omar Carrasco: In January 1996, two soldiers were sentenced to 15 years' imprisonment for causing his death. The case is currently before the Criminal Court of Cassation following an appeal by the defence counsel of the convicted men, who were found guilty by the Neuquén Federal Criminal Court on 28 February 1996. The sentences for ordinary homicide ranged from 10 years' imprisonment (for two of the victim's companions performing military service) to 15 years (for a sub-lieutenant). A non-commissioned officer was found guilty of concealment and sentenced to three years' imprisonment. This case eventually led to the abolition of compulsory military service, which has been replaced by voluntary professional service.

Cristián Ariel Campos case: This 16-year-old boy was abducted on 2 March 1996 in the city of Mar del Plata, Province of Buenos Aires; his burnt body was found a week later. As a result of this case, the then chief of the Province of Buenos Aires police, Pedro Klodczyk, submitted his resignation to provincial governor Duhalde, who dismissed him on the spot. The governor also ordered commissioner Rolando Roblero, Director of Security, to take retirement. He had been third in the scale of command of the provincial police and chief of the Buenos Aires patrol division, to which the policemen concerned belonged. As a result of the judicial proceedings, four police officers were found guilty of "unlawful deprivation of liberty and torture followed by death". Three of them were sentenced to life imprisonment and one to 15 years' imprisonment; they were all dismissed from the police.

Mirabete case: On 20 February 1996, Alejandro Mirabete, aged 17, and a group of friends were drinking beer and chatting at a kiosk in Calle Vuelta de Obligado, between Olazábal and Mendoza in the Belgrano

district of Buenos Aires, when a group of policemen from the 33rd police district ordered them to identify themselves. For some reason, Mirabete took fright and ran away, but he was caught by one of the policemen. He was shot in the back of the neck and died after 10 days' of suffering. The case, listed as No. 13,758/96 under the heading "Miranda, Mario Eduardo, ordinary homicide. Victim: Mirabete, Alejandro", originally came before Juvenile Court No. 6, Division No. 17. At that time, the file was headed "Attempted homicide". When Alejandro Mirabete died, the juvenile court judge declared herself incompetent, and the proceedings were transferred to Court of Investigation No. 30, Division No. 109, on 4 March 1996. There, on 5 March, officer Miranda's statement was amended to cover the commission of the offence of ordinary homicide. The next day, a reconstruction of the events under investigation was held, with the assistance of experts from the Gendarmaría Nacional. On 7 March, officer Miranda was committed for trial and remanded in custody, and this was confirmed by the competent court on 22 April. On 25 September 1997, Buenos Aires Criminal Court No. 28 sentenced Federal Police Sergeant Mario Miranda to 18 years' imprisonment after finding him guilty of the crime of ordinary homicide against Alejandro Mirabete. In its decision, the judges considered that, on the night of 20 February 1996, Sergeant Miranda fired a shot point-blank at the head of the victim even though the latter had not resisted arrest and was not carrying a weapon.

José Luis Cabezas case: The case of this journalist, who was murdered on 25 January 1997, is at the examination stage before Dolores Criminal and Correctional Court No. 3, Province of Buenos Aires, and is being handled by Judge José Luis Macchi. Numerous arrests have been made, various tests have been carried out and the investigation is continuing. Among those arrested are a number of Provincial Police officers, one of whom has been charged with being the material perpetrator of the murder. All the officers have been dismissed by the Provincial Secretary for Security. The Province of Buenos Aires legislative assembly has set up a bicameral commission to supervise and monitor the investigation of this crime.

Sebastián Bordón case: Twelve days after the body of Sebastián Bordón was found in the Province of Mendoza, the competent judge examined a list of seven local policemen suspected of being involved in this case, which is before the court of Judge Waldo Yacante. The version given by the Mendoza police when the body was found (on 12 October 1997) did not convince the judge. According to the evidence resulting from the first autopsy reports, which have been decisive in this case, the body bore lesions similar to those caused by blows; judging from the state of the victim's clothes, the body had been dragged along the ground (supporting the theory that it had been placed at the bottom of a ravine); his death agony had lasted many hours; and it is unlikely that he died in the place where he was found. The main suspects would appear to be officers from El Nihuil police station, where Bordón was last seen.

Miguel Quintana case: The State of Buenos Aires will have to pay 160,000 pesos in compensation to the family of Miguel Quintana, a hunter who was shot dead by a sergeant in the Buenos Aires police. This was

the decision of Judge Elbio Bautista Sagarra after a claim for damages had been lodged by Silvia Liliana Peñalva, the victim's wife. The incident occurred on 4 July 1993 at El Hornero, near Rauch, 200 kilometres from La Plata. According to the judicial record, Mr. Quintana was travelling in a van with Carlos Alberto Rocha and Pedro Rosario González after hunting hares. When Mr. Quintana and his companions were driving past the Los Angeles estate, they came under fire from a police patrol vehicle, in which non-commissioned officers César Peralta and Hugo Campos were travelling. One of the shots pierced the door of the van and hit Mr. Quintana, who died before reaching hospital. In the criminal proceedings, the evidence obtained by the judges was insufficient to determine which police officer killed Mr. Quintana. For this reason, the Azul Court of Appeal dismissed the charge of culpable homicide against the two policemen.

24. In connection with the statement made in paragraph 4 of the Committee's general comment 6, we repeat that Argentina has contributed to, and has been a strong proponent of, the text of the Inter-American Convention on Forced Disappearance of Persons, which was adopted in Belém do Pará on 9 June 1994 and entered into force on 28 March 1996. Later, by Act No. 24,820 adopted on 30 April 1997 and promulgated on 26 May of the same year, the Convention was given constitutional rank.

25. In addition, through the constitutional reform of 1994, forced disappearance was introduced as a ground for habeas corpus proceedings, which meant that it was incorporated in the Constitution before being included in ordinary legislation. The text of article 43 of the Constitution is reproduced in the information provided in connection with article 2 of the Convention. With reference to this subject, stress should be laid on Argentina's strong commitment vis-à-vis the events of the past through its redress policy, on which information is given in connection with article 9 of the Covenant.

26. In connection with paragraph 5 of the Committee's general comment 6, reference is made to the programmes undertaken with the aim of reducing infant mortality, the increase in life expectancy, and action to combat malnutrition and epidemics. The information provided in this report was included in the second periodic report of Argentina relating to the International Covenant on Economic, Social and Cultural Rights in April 1997.

Health indicators

27. The slow decline in infant mortality (23.9 per thousand live births in 1992, 22 per thousand in 1994) and in the gross mortality rate are continuing, and life expectancy at birth is increasing (68 years for men and 74.8 for women). There are still substantial levels of infant mortality for avoidable causes (in 1990, only 16 per cent of neonatal deaths and 23.9 per cent of post-neonatal deaths were due to non-avoidable diseases) and substantial differences between provinces (in Tierra del Fuego 11.2 per thousand live births, and in Chaco 33.5 per thousand in 1992 and 31.4 per thousand in 1994).

28. Health conditions remain unchanged. The main causes of death continue to be heart disease, malignant tumours, cerebrovascular disease and accidents. Deaths through arteriosclerosis as a single infection and through certain infections during the perinatal period have declined. The incidence of AIDS has grown; it is estimated that every day there are an average of 3 new cases, and between 15 and 45 new cases of infection.

29. Generally speaking, the incidence of preventable diseases remains stable thanks to the Immunization Programme, except tuberculosis, which is increasing. The number of cases of meningoencephalitis, malaria, leprosy and leishmaniasis has remained stable. The number of cases of cholera has declined in relation to the previous period (2,008 in 1993, and 847 up to September in 1994).

30. Chagas' disease continues to be the most endemic disease in Argentina, although its geographical incidence is primarily in the central valley of Catamarca and its serological prevalence continues to decline.

31. Accidents and violence continue to come fourth in causes of death and give rise to serious concern, both because of their avoidability and because of the loss of years of life which they cause. There has been no change in the problems and levels of mental and oral pathology.

Plans and priorities for the national development of health

32. Argentina is going through a period characterized by a number of important macroeconomic achievements in the framework of the neo-liberal economic adjustment established by the Government. The period is one of economic stability, inflation having been brought under control as one of the consequences of the Convertibility Plan and economic dynamism; for the moment, the outstanding need is to improve social investment. Important elements of this strategy are the reform of the State, the privatization of public enterprises, and the decentralization of competence, responsibilities and services to the provincial and municipal authorities.

33. On the basis of the definition of the substantive and instrumental health policies decreed in 1992, the Government has geared efforts to stimulating a number of changes in the structure and functioning of medical care, through reform projects such as the deregulation of social projects, decentralization programmes and introduction of public hospital tariffs (self-management) and ensuring the quality of care, together with the strengthening of capacity for legislation, regulation and control of its principal management units at the central level. The strategic and programmatic guidelines and priority courses of action of the Pan-American Health Organization emphasize approaches which link health needs and the integral development of societies, the restructuring of health systems through decentralization strategies, local participation and linkage in order to gain in equity, effectiveness and efficiency, the concentration of efforts on programmes geared to priority problems and groups (focalization), and promoting efficient forms of investment in the improvement of the environmental situation. In the coordination of the two aspects of development policies, the priorities of the current period of government are defined.

Infant mortality statistics: 0 to 11 months

34. The national infant mortality rate was 33.2 per thousand in 1980, 26.2 per thousand in 1991, 24.7 per thousand in 1993 and 22.9 per thousand in 1994. A noticeable feature is the difference in the death rate by sex. In all regions of the country, the male infant mortality rate is higher than the female rate by an average of approximately five points. From 1980 to 1991, the rate for the country as a whole decreased by about 25 per cent, Chaco by about 40 per cent and the Federal Capital by about 18 per cent.

35. The average rate for 1991, 24.7 per thousand, conceals some significant regional variations. Higher-than-average rates are found in the north-east (30.0) and north-west (30.5) regions, intermediate values in the Cuyo (24.6) and Pampeana (23.5) regions, and the lowest in Comahue (20.0), Patagonia (19.1) and the Federal Capital, with a rate of 15.2 per thousand live births. The very low rates of some provinces with overall poverty indicators suggest under-registration of births.

36. In 1991, children less than one year old accounted for 77.37 per cent of deaths in the 0-to-14-year age group. Of these, 37.62 per cent died between 28 days and 11 months of age (post-neonatal mortality) and 52 per cent during the first 28 days (neonatal mortality). In other words, 61 per cent of infant mortality cases occur within the first 28 days of life. The greatest concentration of deaths occurs between 0 and 6 days (early neonatal mortality), most within the first 24 hours.

37. The decrease in the mortality rate is due to the decrease in vaccine-preventable diseases with the development of specific vaccinations and to the decline in the incidence of diarrhoea and pneumonia, in both the female and male population groups. On the other hand, the neonatal mortality rate remains stable, despite technological progress and its high level of avoidability.

38. Perinatal deaths are responsible for 50 per cent of child deaths. They are the leading cause of mortality not only in the first year of life but up to the age of 10. The most important problems in this area are premature birth and low birth weight, together with a high percentage of maternal deaths. The two present a health challenge that cannot be met by pediatricians and neonatal specialists alone. It is estimated that some 70 per cent of such deaths are avoidable, especially through pregnancy monitoring and proper care during childbirth.

39. Very low birth weight (less than 1,500 g) accounts for 0.73 per cent of the total and low birth weight (less than 2,500 g) 5.6 per cent. In 16.16 per cent of cases, birth weight is not known: the provinces of Santa Fé, Santiago del Estero and Catamarca do not report newborns' weight. It is estimated that, if the quality of this information were improved, the figure for low birth weight would be about 10 per cent.

40. Estimated life expectancy at birth:

	Male	Female
1990-1995	68.60	75.70
1995-2000	69.65	76.75

Infant malnutrition

41. With regard to malnutrition, one of the causes of infant mortality, Argentina is not in a position to conduct an overall diagnostic study of maternal and child nutrition owing to the lack of adequate records in several provinces and the use of different indicators and cut-off points in the various provinces. The possibility is being studied of maintaining comparative malnutrition records, at least in the age group of greatest vulnerability, i.e. children under the age of 2 years.

42. Nutritional status is evaluated basically through anthropometric data (weight and height measurement), compared with normal growth standards. The only information available consists of ad hoc studies, representing chosen geographical areas or population groups and primary care records in a few districts.

43. The following were the results of a 1991 study based on information provided by the heads of the Mother and Child Health Programme in a few provinces:

Salta	Global incidence, 0 to 2-year age group, 18%; 2 to 5-year age group, 10%;
Jujuy	0 to 5-year age group, approximately 19%

44. Both provinces are in the north-western region, in which nutritional deficiencies are among the five leading causes of death for girls and boys in the 0 to 9-year age group.

Comahue region:

Neuguén	0 to 1-year age group, 9%;
Río Negro	0 to 1-year age group, 18%

Patagonia region:

Chubut	0 to 1-year age group, 7.1%; 1 to 2-year age group, 15%; 2 to 4-year age group, 20%

45. Low birth weight is a direct indicator of maternal malnutrition and a risk for the newborn infant.

Measures to reduce stillbirths and infant mortality

46. The following measures are being taken by the Government through the Community Health Department of the Ministry of Health and Social Welfare, to reduce stillbirths and infant mortality and foster children's development:

(a) Publications

National Commitment to Mothers and Children

National Plan of Action for Mothers and Children

Standards of Perinatology (6 volumes)

Handbook of Nutritional Training Methods

Breastfeeding Training Module.

(b) Training

Transfers between districts

Direct training by the National Office of Maternal and Child Welfare.

(c) Computerization

Transfer of funds for the purchase of computer equipment

Implementation of nutritional information network covering the perinatal period, children and teenagers.

(d) Nutritional support

Transfer to the districts of funds for the purchase of powdered milk and delivery in accordance with each programme.

(e) Breastfeeding

Advisory commission on breastfeeding

"Baby and Mother-Friendly Hospital" campaign, 10 hospitals evaluated.

(f) Equipment

Transfer of funds for the purchase of low and medium-complexity equipment.

(g) Medicines

Purchase of medicines for perinatology, nutrition, IRA and CDD programmes.

(h) Evaluation of services

The effectiveness of the mother-and-child health-care services is evaluated by using the PAHO Evaluation Handbook to identify the principal deficiencies in the following categories: buildings, human resources, programming standards and procedures, administration, supplies and health education.

(i) Audit and financial control

To verify the use of the funds transferred and degree of implementation of programmes.

(j) Evaluation of goal attainment and strengthening of goal indicators

Meetings are held at the national level with the programme heads in each province, at which indicators are agreed on (April/June) and goal achievement evaluated (October).

Measures to prevent, treat and combat epidemic, endemic and occupational diseases

47. In 1993 and 1994, PAHO convened the Tripartite National Meetings to design a draft national workers' health plan. The objectives of the plan were:

(a) To control and reduce occupational hazards;

(b) To establish priorities and an order of importance for the role of health promotion and protection in the labour sector; and

(c) To improve workers' health coverage.

48. Argentina also took part in the Tripartite Regional Meeting on Workers' Health, held in Porto Alegre (Brazil) in 1993. At that meeting, representatives of workers, employers and the Ministries of Health and Labour of Brazil, Chile, Paraguay, Uruguay and Argentina defined health strategies for workers in the geographical area concerned.

The Government is conducting various programmes on the situation of the most disadvantaged sectors and their access to health:

(a) Non-contributory pensions. These allowances provide pensions and medical coverage for beneficiaries of national special pension laws (mothers with unmet basic needs and more than seven children, oldest persons over 80 years of age, disabled persons, etc.);

(b) Institutional subsidies, in support of projects by government agencies and non-governmental organizations (NGOs); and

(c) Personal subsidies, to cover individual emergency situations involving the extremely poor.

Older persons

49. The Government has conducted various campaigns and programmes aimed at reducing the health risks facing older persons, through the Ministry of Social Development and the National Institute of Social Services for Retired Persons and Pensioners:

(a) Support Programme for Older Persons. The objectives of this programme are to: provide care for persons over 60 years of age with unmet basic needs and without social insurance; improve the living conditions of older persons at high social risk and help ensure that their essential needs are met; foster the beneficiaries' contact with each other and with other generation groups by encouraging participation on a mutually-supportive basis and making use of their experience and skills. To this end, the programme provides aid in the form of food, social tourism and clothing;

(b) PAMI: Geriatrics. Admission to geriatric institutions for dependent or semi-dependent older persons without families or resources;

(c) PAMI: Financial subsidies. To assist elderly retirees and pensioners with various unmet needs in purchasing medicines, rent, transport and extra clothing;

(d) Welfare programme. Arranges for food supplements and encourages involvement of needy older persons in the centres' activities. Provides food assistance and supplementary meals in community kitchens.

Women, Health and Development Programme

50. The basic aim of the Women, Health and Development Programme is to help improve women's health. The programme has a dual focus: on the one hand, women as the centre of health promotion and care, in coordination with other Ministry of Health and Social Welfare programmes, such as maternal and child care, adult health, and communicable and non-communicable diseases; on the other, women as active participants in health development, at both the informal level, i.e. in the family and community, and the formal level, i.e. the health sector and organized social activities.

51. The programme's objective is to promote human development and community health by transforming the role of women. It aims to train trainers, in order to organize continuous workshops for women, emphasizing their role as agents for change. The programme includes the sub-programme on aboriginal women and health.

Instruction in health problems, and measures to prevent and control these problems

52. As part of its Health Resources and Programmes Division, the Community Health Department of the Ministry of Health and Social Welfare has conducted various programmes involving the production and dissemination of educational materials, among which the following are worthy of mention:

(a) Journals

(i) Health Education, No. 55, 40,000 copies. Main subject: cholera. Distribution throughout the country, through the provincial health education departments and the formal education system;

(ii) Health Education, No. 56, 40,000 copies. Main subject: AIDS. Nationwide distribution.

(b) Pamphlets

(i) Maternal-child health;

(ii) Breastfeeding;

(iii) Taking care with the sun;

(iv) Pediculosis;

(v) Malaria.

There is a nationwide distribution system and 20,000 copies were produced on each of the subjects mentioned.

(c) Technical publications, intended especially for health team professionals.

(i) Health Education, No. 1 (1995), subject:

"AIDS: The epidemic of modern times";

(ii) Health Education, subject: domestic violence;

(iii) In preparation: "Alcoholism"; "Smoking"; "Food Security".

Technical advisory assistance is also provided for the various strategic areas dealt with by the Ministry of Health and Social Welfare and NGOs.

(d) Media

(i) The Argentine Remote Education System, a branch of the Media Division of the Office of the President, has produced and broadcast televised programmes free of charge on: (a) cholera; (b) Argentine haemorrhagic fever; (c) alcoholism; (d) vaccination; (e) accidents. Programmes on oral hygiene and accidents in the home are currently being prepared;

(ii) Annual vaccination week (26 June to 2 July), widely publicized by the media throughout the Republic;

(iii) Projects involving press releases on health-related subjects such as: World Health Day; prevention and treatment of heatstroke; carbon monoxide alert; Breastfeeding Week, etc.;

(iv) Assistance to the public, principally teachers and students in the education system and representatives of public welfare agencies. Total number of consultations during the first half of 1996: 664;

(v) Health Theatre: independent groups of stage actors and directors are given technical support in preparing a script and producing a play about alcoholism, in cooperation with the CUIDA Programme/Office of Health Promotion and Protection.

(e) Activities aimed at the improvement of health education

(i) Standing Advisory Commission on Action to Combat Diabetes; Standing "Well Teenager" Technical Advisory Group; National Anti-Smoking Commission; Coordinating Commission for the participation of NGOs and health advocacy agencies; Working Group of representatives of the Ministry of Culture and Education and the Drug-Addiction Prevention and Narcotics Control Department; National Commission on Breastfeeding; National Commission for Nutritional Improvement; National Commission for Responsible Procreation; National Commission for Cholera Prevention and Control; National Commission on Road Traffic and Safety; and Working Group on Violence;

(ii) Evaluation of projects on training and community development by public welfare agencies;

(iii) National Centre for Community Organizations, a department of the Ministry of Social Development. Information/Action Day at the National Library and establishment of a permanent coordinated structure for effective relations with NGOs working in the field of health;

(iv) Evaluation in the area of health education by the National Institute of Nutritional Research, Salta, July 1995;

(v) Evaluation of the Lomas de Zamora Friendly Hospital Mother and Child Clinic, Province of Buenos Aires, in coordination with the Department of Maternal and Child Health;

(vi) Special events: Book Fair (1995), Evaluation of consultations and distribution of educational materials; International Congress for Prevention and Assistance in the field of Drug Addiction, Prevention programme in the field of education (1995); "Well Teenager" Health Management Seminar, organized by the Department of Maternal and Child Health and the Maternal and Child Health Care Programme, Province of Buenos Aires (1995); World Health Day, theme: "Target 2000: A World without Polio", various activities.

National priorities for technical cooperation with PAHO

Health as part of development

53. This programme aims at strengthening the aspects of health which are involved in development, at the level of government economic and social policies, including administrative reform, and improving the monitoring and assessment of public health. Promotes the strengthening of proposals on scientific and technological development, health, women and development, workers' health and social participation. This programme includes management support for national health development through the strengthening of the PAHO/WHO office in Argentina and technical cooperation between countries through the regional integration of technical cooperation project.

Health services development

54. This programme aims at strengthening coordination among health sector institutions in order to achieve provincial and municipal decentralization and integration at the local district level. Efforts at the central and provincial levels aim at strengthening the formulation of State policies, plans and standards, and the State's regulation and control capacity. The objective at the municipal level is to organize and implement pluralistic and complementary service networks providing more efficient individual and collective health-care services. Efforts focus on strengthening the role of the public hospital in such networks through a self-management process, and the quality of public and private health providers, through a service quality guarantee process.

Development of human resources for health

55. Development of human resources of critical significance to the sector by seeking to change undergraduate and postgraduate educational models, and strengthening health services personnel management at the national and provincial levels.

Health promotion and protection

56. Considered to be a government priority, aims to stimulate action at the individual and collective levels to modify common risk factors and lifestyles associated with the most prevalent non-communicable chronic diseases. Includes strategies which help promote a culture of health at the grass-roots level, such as the "healthy communities" initiative. Special emphasis is placed on maternal, child and teenage health and on health promotion through dissemination of scientific and technological information and the media.

Health and the environment

57. Priority areas for the Government, which aims to reduce environmental health risks and comply with the international agreements and conventions that emerged from the United Nations Conference on Environment and Development. Special emphasis on the national component of the Regional Plan for Investment in the Environment and Health (PIAS).

Control and prevention of communicable diseases

58. Efforts to be made at the national level to reduce morbidity and mortality from preventable communicable diseases which constitute a public health problem in Argentina and include Chagas' disease, dengue, tuberculosis and other diseases preventable through immunization. Particular importance is attached to AIDS. Involvement in a range of integrated activities aimed at strengthening national and provincial programmes; support for research, social communication, diagnosis and treatment activities. Special emphasis to be given to inter-programme actions in priority areas.

Article 7

59. Article 18 of the Argentine Constitution of 1853/1860 abolished for ever and throughout the Republic all forms of torture or beating.

60. As a result of the 1994 reform under article 75 (22) of the Constitution, a number of international human rights instruments now have constitutional rank, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

61. At the global level, Argentina promotes the observance and adoption of international human rights standards. The Government has thus co-sponsored resolutions adopted by the United Nations Commission on Human Rights and is a firm supporter of an optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which places an obligation on States parties to accept visits from a group of competent independent experts to any place where persons deprived of their liberty are held. These visits, which would project the duties of the Procurator for Prisons in the international arena, form part of the effort to prevent human rights violations, an area that requires the greatest possible expenditure of effort on the part of the international community.

62. With regard to the strengthening of monitoring bodies, Argentina submitted periodic reports to the Committee against Torture on 15 December 1988 (CAT/C/5/Add.12/Rev.1), 29 June 1992 (CAT/C/SR.122-124 and 124/Add.1) and 26 September 1996 (CAT/C/34/Add.5).

63. In the inter-American sphere, Argentina has contributed to and strongly promoted the text of the Inter-American Convention on Forced Disappearance of Persons, which was adopted in Belém do Pará on 9 June 1994 and entered into force on 28 March 1996. States parties to this instrument undertake not to practise, permit or tolerate the forced disappearance of persons, even under a state of emergency. A state of emergency may not be used to justify the forced disappearance of persons; indeed, all judicial guarantees must remain in force at such times.

64. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women has also been adopted; this instrument covers acts of torture perpetrated or tolerated by the State or its agents, wherever they may take place. Argentina deposited its instrument of ratification of the Convention on 5 July 1996.

65. In addition to its main objective of eradicating the practice of torture in any place and at any time, the Convention also aims to ensure that public officials who commit such acts do not enjoy impunity, especially when their action amounts to an abuse of authority.

66. Argentina's firm commitment to combat impunity is illustrated by the judicial decision of 1995 to extradite Erich Priebke to Italy for trial. The Italian court's dismissal of the case prompted the Argentine authorities to issue a statement that he would not be permitted to return to the country.

67. Reference is again made to a number of the cases mentioned in the information relating to article 4.

Article 8

68. The information given in the second periodic report (CCPR/C/75/Add.1, paras. 38-41) remains valid, since there is no bonded labour or debt servitude of any kind in Argentina. According to article 15 of the Constitution:

> "There are no slaves in Argentina ... Any contract to buy or sell persons is a crime for which the parties, the notary or the authorizing official shall be held liable ..."

69. In addition, article 140 of the Penal Code states:

> "Anyone holding a person in slavery or in a comparable condition and anyone receiving a person in that condition for the purpose of keeping him in slavery shall be punished by means of the applicable custodial penalties (established in arts. 141 et seq.).

Article 9

70. The established procedures described in the previous report (CCPR/C/75/Add.1, paras. 42-48) still apply.

71. Article 280 of the Code of Penal Procedure, relating to restrictions on liberty, obliges authorities to carry out arrests and detention with the least possible harm to the person and reputation of those concerned, and with an order drawn up for them to sign, informing them of the reason for the procedure and the place to which they are to be taken, and naming the judge who is to consider the case.

72. In cases of arrest on a warrant issued by a competent judicial authority, regardless of the stage reached in the case and until such time as pre-trial detention is ordered, anyone accused of an offence may, on his own account or through a third party, request exemption from detention. In accordance with the provisions of article 316 of the Code of Penal Procedure, the judge shall determine the act or acts involved and, if the accused is liable to less than eight years' imprisonment, the judge may exempt him from detention. However, the judge may also do so if he believes there are prima facie grounds for a suspended sentence.

73. The order to grant or deny release or exemption from detention may be appealed by the Public Prosecutor, the defence counsel or the accused, without suspensive effect, within 24 hours (Code of Penal Procedure, art. 332).

74. A pre-trial detention order may be appealed in the court issuing the order, which must give a ruling. If the appeal is granted, the proceedings will take place in a higher court. If the appeal is denied by the court hearing it, the appellant may submit a direct complaint in order to obtain a ruling that the appeal was wrongfully denied.

75. Article 43 of the Constitution reads:

> "If the right that is infringed, restricted, modified or threatened is the right to physical freedom, or in cases of unlawful worsening of the form or conditions of detention, or in cases of forced disappearance of persons, the action of habeas corpus may be brought by the person concerned or by any other person on his behalf, and the judge shall rule immediately, even while the state of siege is in force."

76. On 7 December 1994, as part of the State's policy of redress for events in the recent past (up to 10 December 1983, the date when democracy was restored), Congress passed Act No. 24,411 granting benefit to the legal successors of persons who, at the time of its enactment, were in a condition of forced disappearance and of those who had died as a result of action by the armed forces, security forces or any paramilitary group prior to 10 December 1983. By Act No. 24,499 of 14 June 1995, the time limit for submitting benefit applications was extended by five years.

77. This legislation forms part of the Government's progressive policy of redress for acts which occurred immediately before the restoration of democracy. The relevant enactments include:

(a) Act No. 23,466 of 30 October 1986 granting a non-contributory pension to relatives of persons who disappeared before 10 December 1983. Payment of these pensions began on 1 November 1987; 4,160 were granted and 1,864 are still being paid at the time of writing;

(b) Act No. 23,852 of 27 September 1990 exempting from military service, on request, any persons whose parent, brother or sister disappeared before 10 December 1983 in circumstances which cause them to believe that they were victims of a forced disappearance. This legislation is no longer relevant since compulsory military service has been abolished;

(c) Decree No. 70/91 granting benefit to anyone detained by the Executive before 10 December 1983 who had brought an action for civil redress but had not been successful because the action was declared prescribed. Under this Decree, 227 benefits have been paid out, totalling 9,980,000 pesos;

(d) Act No. 24,043 of 27 November 1991 granting benefit to persons held in the custody of the Executive before 10 December 1983 or who, although civilians, had been deprived of their liberty on orders from military courts, whether or not they had been convicted by such a court. Act No. 24,436, promulgated on 11 January 1995, extended by 180 days the time limit for

applying for the benefit, due to expire on 27 September 1995, and Act No. 24,906 of 26 November 1997 again extended the time limit by a further 180 days from 16 December 1997. This practice has made it possible to bring within the scope of Act No. 24,043 the following cases: persons detained by, inter alia, military and police authorities; conscripted soldiers detained by councils of war; and persons held in secret detention centres. Of the 9,840 applications received, decisions were taken on 8,416, 7,596 favourably. Of the 820 refused, about 54 per cent related to periods of detention that fell outside the scope of the legislation, 13 per cent related to members of the armed forces or security forces or conscripts detained by military courts, 22 per cent had been placed at the disposal of a judge, 10 per cent related to cases of exile and 1 per cent had already received the benefit under Decree No. 70/91. As of 24 February 1998, 551,005,427.78 pesos had been paid out;

(e) Act No. 24,321 of 11 May 1994 permitting a person to be reported missing by reason of forced disappearance if, before 10 December 1983, he had disappeared involuntarily from his place of domicile or residence without giving notice of his whereabouts;

(f) Act No. 24,823 of 7 May 1997, which regulates certain aspects of the benefits provided under Act No. 24,411, such as their nature, procedure for obtaining them and beneficiaries.

78. Argentina recognizes the principle that redress for human rights violations is not simply a matter of an indemnity payment, yet very often this is in practice the only means of compensation available. Nevertheless, in calculating such compensation, the Argentine State includes as a matter of principle the moral damage caused by proven human rights violations In addition, Argentina has taken various steps to meet needs arising from human rights violations committed between 1976 and 1983.

79. With regard to measures to trace and return the children of disappeared persons, the Under-Secretariat for Human and Social Rights within the Ministry of the Interior has established a National Commission on the Right to an Identity, whose task is to lead the search for missing children and establish the whereabouts of abducted and disappeared children whose identity is known, and of children born to women illegally deprived of their liberty. In this way the State is attempting to meet its obligations in respect of the right to an identity, assumed on ratifying the Convention on the Rights of the Child (arts. 7 and 8). As well as the victims of forced disappearance under the dictatorship, the search and tracing operation covers children who are victims of abduction or trafficking in minors.

80. The National Commission was established following a request by the Association of Grandmothers of the Plaza de Mayo and at the behest of the President of Argentina, and is made up of representatives of the Public Prosecutor's Office, the above-mentioned Association and the Under-Secretariat for Human and Social Rights, where it has its offices. In addition, it works with the National Genetic Data Bank to gather DNA samples from family members and from children whose identity has been changed. It is currently investigating 284 complaints on file and seeks information from civil registers, the electoral chamber, health centres, etc. It also provides

advice on a continuing basis to persons over 18 who have doubts as to their true identity and assists them with the procedures involved in resolving their cases. The above-mentioned enactments are annexed.

Article 10

81. The information regarding article 10 was prepared largely on the basis of the annual report to Congress submitted by the Procurator for Prisons and relates to the period 1995-1996. Use was also made of the report on the development and evaluation of the Master Plan for National Prisons Policy for the period April 1995 to March 1997, prepared by the Secretariat for Prison and Social Rehabilitation Policy within the Ministry of Justice.

82. Criminal justice has for some years been undergoing a large number of truly far-reaching changes - and not only in Argentina. Jurists, sociologists, theoreticians and judges are constantly being called upon to draw up new plans for the "overhaul" of the current model, reflect on the extent to which the conflict resolution system can be implemented in society, to lend support to stricter or more liberal positions, to speculate on the consequences of their abandonment, to come up with innovative analyses or simply to give an empirical explanation of how the system works.

83. It must not be forgotten that there are now genuine opportunities for the humanization of imprisonment, building on the concept of rehabilitation, which should be seen as a guarantee, a constraint on the States's power to punish, and a strategy for humanizing criminal penalties or procedures.

84. From the legislative point of view, a penitentiary law should itself include provisions for its practical implementation. This can be done by restricting the normative function of regulations, introducing mechanisms to deal with cases of non-compliance with legal provisions, establishing a range of bodies responsible for implementation, publicizing legislation more widely, etc.

85. As can be seen from the previous report (CCPR/C/75/Add.1, para. 53), the institution of Procurator for Prisons was created by Decree No. 1598/93, with the aim of establishing, within the Executive, a control mechanism (the Federal Prison Service - FPS) for the protection of the human rights of persons in the custody of federal authorities throughout the country, whether awaiting trial or serving sentences.

86. The Procurator's specific duties are to investigate complaints and requests made by prisoners themselves or their relatives (for blood relatives up, to the fourth degree, and for relatives by marriage up to the third degree), or by any person who can prove that they live with a prisoner concerning events that appear prima facie to involve a violation of their rights. The Procurator may also file an appropriate criminal complaint and submit a recommendation to the Ministry of Justice, to which the prison authorities are responsible. In this respect, the work of the Procurator and of the enforcement judge are complementary.

87. Allegations of ill-treatment received:

Period	Complaints
1993-1994	1 382
1994-1995	1 170
1995-1996	1 092

88. Furthermore, the Procurator for Prisons has constantly publicized not only the relevant legislation, but also the actual situation in prisons, considering that the dissemination of information on the prison problem will help civil society to understand that those persons serving a custodial sentence or held in detention while awaiting a judicial decision have rights that should be recognized simply because they are human beings, regardless of what crimes they may have committed or may be suspected of having committed.

89. Since the creation of the office, it has been considered essential that inmates be informed of the recommendations made in response to their complaints. Leaflets are thus being printed for distribution in the various federal penitentiary facilities containing the provisions of the new Custodial Sentence (Enforcement) Act, the new Regulations on Pre-trial Detention and Decree No. 1598/93.

90. With regard to the education and training of officials responsible for persons deprived of their liberty, mention should be made of the study programmes of the FPS Training and Further Education Institutes. By Ministry of Justice decision No. 1145/91, FPS study programmes were updated. The programme for the workshop on the duties of warder, guard and workshop instructor, intended for junior federal prison officers, covers the Universal Declaration of Human Rights and the Code of Conduct for Law Enforcement Officials. Similarly, the programme for senior officers includes a subject entitled "Applied ethics and human rights", which must cover at least: the concept of human rights, categories, conventions, treaties, covenants and declarations, other legal instruments in force, including the Pact of San José (Costa Rica) the Standard Minimum Rules for the Treatment of Prisoners, etc.

New general regulations for pre-trial detention

91. New regulations for pre-trial detention were approved by Decree No. 303/96, replacing the regulations previously in force. Title 1 sets forth the general principles, according to which persons under the age of 18 must not be sent to FPS prisons or jails and stipulates that the purpose of the prison regime must not only be to detain and hold persons awaiting trial, but also to ensure that they maintain or acquire socially acceptable standards of behaviour and learn to coexist with others.

92. One of the most important innovations under the new regulations is the prohibition of overcrowding in order to ensure adequate accommodation, although the regulations make no provision concerning action to be taken if prison capacity is exceeded.

93. With regard to security procedures, it is now stipulated that searches of persons, belongings or areas occupied by inmates, roll-calls and inspections of facilities must be carried out with the guarantees set forth in the regulations and with due respect for human dignity.

94. Important changes have also been made in the area of discipline. A substantial change has been made in the evaluation of prisoners' behaviour because of the inevitable link between evaluation and the punishment of inmates; they now have access to standard administrative and legal complaint procedures.

95. The regulations relating to work have also been improved and now stipulate the extra benefits to which pre-trial detainees may be entitled if they work, in order to encourage them to work. Remuneration at a level similar to the minimum wage is provided for, and is to be included in the budget, although, at the time of writing, this is not yet the case.

Procedural provisions

96. The physical condition of detainees is checked by means of medical examinations on admission to and release from the place of detention. In case of an alleged breach of this rule, prisoners may appeal to the judge hearing the case or may, in the framework of the FPS, address a complaint to the Procurator for Prisons, who is responsible for the protection of prisoners' rights.

97. Article 493 (1) of the Code of Penal Procedure stipulates that the judge shall be competent to monitor observance of all constitutional guarantees and international treaties ratified by the Argentine Republic in the treatment accorded to convicted prisoners, detainees and persons subject to security measures.

98. In order to provide fuller information on the legislation in force in this area, the most significant provisions are transcribed below.

99. Article 282 of the Code dispenses with the detention of the accused "when the offence being investigated does not carry a custodial sentence or a suspended sentence appears to be appropriate", except in cases of flagrancy. In all other cases, "the judge shall issue a detention order for the accused to be brought before the court, provided there is reason to receive the accused's statement" (art. 283).

100. With regard to incommunicado detention, article 205 states:

> "The judge may order the detainee to be held incommunicado for a period of no more than 48 hours, which may be extended for a further 24 hours by substantiated order when there is reason to fear that he will conspire with third parties or to otherwise impede the investigation.
>
> Once the police have exercised their powers under article 184 (8), the judge may extend incommunicado detention up to a total of no more than 72 hours.

In no circumstances shall incommunicado detention prevent a detainee from communicating with his counsel immediately before beginning his statement or before any proceeding requiring his personal participation.

A person held incommunicado shall be allowed the use of books and any other articles he may request, provided they cannot be used to evade incommunicado detention or to make an attempt on his own or another's life.

Similarly, he shall be authorized to perform civil acts which may not be postponed and do not decrease his solvency or jeopardize the purposes of the pre-trial examination."

101. The liberty of the accused without prejudice to the continuation of the proceedings, his maintenance in pre-trial detention, and the practices of exemption from detention and release, are covered by the following provisions:

"Art. 300. Before the accused's statement has been completed, or after the accused has refused to give one, the judge shall inform him of the legal provisions governing conditional release.

...

Art. 306. Within a period of 10 days following the statement, the judge shall order proceedings against the accused provided there is sufficient evidence that an offence has been committed and that the accused is guilty of involvement in it.

...

Art. 309. When the judge, upon expiry of the period set in article 306, finds that there are no grounds for ordering a trial or a stay of proceedings, he shall issue an order to that effect, without prejudice to the continuation of the investigation, and shall order the release of any persons detained after verification of the domicile.

Art. 310. When an initiating order is issued without pre-trial detention, because the conditions set forth in article 312 have not been met, the accused shall be left or placed on conditional release, and the judge may order him not to leave or go to a particular place or order him to appear regularly before a particular authority on specified dates. If any specific disqualification is applicable, the judge may also order the accused to refrain from engaging in the activity in question.

Art. 311. Initiating orders and dismissal orders may be rescinded and reformulated ex officio during the pre-trial proceedings. Only appeals without suspensive effect may be lodged against them; appeals against initiating orders may be lodged by the accused or the public prosecutor's office, and appeals against dismissal orders by the latter office or the plaintiff in the case.

Art. 312. The judge shall order the accused to be placed in pre-trial detention on issuing the initiating order in the following cases, unless the accused has previously been granted conditional release and the judge deems it appropriate to confirm it:

(1) When the offence or combination of offences with which the accused is charged carry a custodial sentence and the judge believes, prima facie, that a suspended sentence is not appropriate;

(2) When, despite the fact that the custodial sentence may be suspended, pre-trial release is not appropriate, as provided for in article 319.

...

Art. 316. Anyone who is considered to be accused of an offence in a particular criminal case, regardless of the stage in the case and until such time as pre-trial detention is ordered, may, on his own account or through third parties, request the judge to consider exempting him from detention.

The judge shall determine the act or acts involved, and when the accused is liable to not more than eight years of deprivation of liberty, he may exempt the accused from detention. He may also do so if he believes prima facie that there are grounds for a suspended sentence.

Art. 317. Release may be granted:

(1) In the same circumstances as those applicable to exemption from detention;

(2) If the accused has served, in pre-trial detention or custody, the maximum penalty stipulated in the Penal Code for the offence or offences with which he is charged;

(3) If the accused has served, in pre-trial detention or custody, the penalty requested by the prosecutor, and this appears at first sight to be sufficient;

(4) If the accused has served the penalty imposed by a non-enforceable sentence;

(5) If the accused has served, in pre-trial detention or custody, a period of time which, had he been convicted, would have enabled him to obtain conditional release, provided that prison regulations have been observed.

...

Art. 319. Exemption from detention or release may be denied, with observance of the principle of innocence and article 2 of this Code, when an objective temporary assessment of the features of the offence, the possibility of recidivism, the personal circumstances of the accused

or the fact that he has previously been granted releases provide good reason to believe that he will attempt to escape justice or interfere with the investigations."

102. The new Code of Penal Procedure constitutes an effective instrument for verifying, inter alia, respect for the physical integrity of the detainee by empowering the judge to order, if he deems it necessary, the physical and mental examination of the accused, care being taken to respect the accused's modesty to the extent possible. If necessary, such examination may be conducted with expert assistance and may be attended only by defence counsel or another person trusted by the examinee, who shall be informed of the procedure in advance (art. 218).

103. Other measures help to limit the number of situations in which an accused's interests may be jeopardized. For example, the new Code abolishes the spontaneous statement to the police, endorsing the legal precedents set by the courts of the capital concerning the inadmissibility of such evidence, precisely in order to provide protection from abuses which might arise from the use of the accused as a means of proof. In this connection, article 184 stipulates:

"[Police and security force officers] ... may not receive a statement from the accused. They may only question him to determine his identity once they have read out to him the rights and guarantees contained in articles 104, first and last paragraphs, 197, 295, 296 and 298 of this Code, applicable by analogy to the case, subject to the proceedings being declared invalid if this is not done and without prejudice to the judge's communicating this omission to the officer's superior, who will order the appropriate administrative penalty for this serious breach of duty.

If the accused gives urgent reasons for wishing to make a statement, the police or security force officer shall inform him that he may have to make an immediate statement before the examining magistrate or, if for any reason this magistrate is not able to receive the statement within a reasonable period before any other examining magistrate who may be delegated for this purpose."

104. These measures include a completely new institution in the Argentine legal system namely, "probation" or suspension of the proceedings on a probationary basis. This is used in conjunction with or in addition to a suspended sentence, but always before the trial and precisely avoiding the sentence. Article 293 stipulates:

"When the criminal legislation so permits, the competent judicial body may grant suspension of proceedings, at a single hearing at which the parties have the right to speak.

In such cases, at the same hearing the competent judicial body shall specify the instructions and requirements to be observed by the accused and shall immediately inform the enforcement judge of its decision to place the accused on probation."

105. At the institutional level, the new criminal procedure provides for an enforcement judge (art. 30), whose competence is defined in article 490 as follows:

> "Judicial decisions shall be enforced by the court that issued them or the enforcement judge, as appropriate, who shall be competent to resolve all matters or incidents that may arise while the decision is being enforced and shall make any notification provided for by law."

106. According to article 493, the enforcement judge shall be specifically competent to:

(a) Monitor observance of all constitutional guarantees and international treaties ratified by the Argentine Republic in the treatment extended to convicted prisoners, detainees and persons subject to security measures;

(b) Monitor compliance by the accused with the instructions and requirements laid down in the event of suspension of probation;

(c) Monitor effective compliance with sentences handed down by the judiciary;

(d) Resolve any incidental matters that may arise during this period;

(e) Cooperate in the reintegration in society of persons released on probation.

107. When a detainee is released by order of the competent authority, the Government provides certain safeguards to ensure that release has in fact been granted and that the physical integrity of the detainee has been respected. For a detainee to be released, a judicial order to that effect must be issued and transmitted to the prison authority. A document attesting that this order has been executed, with the signature of acceptance of the person released, shall be resubmitted to the judge hearing the case.

108. As the foregoing brief summary indicates, the reduction of the grounds for detention, and therefore of the duration of deprivation of liberty, together with the limitation of situations jeopardizing the accused's physical integrity and the presence of an enforcement judge, provide the new criminal procedure with a greater number of guarantees than in the past.

Custodial Sentence (Enforcement) Act

109. The Custodial Sentence (Enforcement) Act (No. 24,660) of 8 July 1996 has incorporated several of the propositions and recommendations set out by the Procurator for Prisons.

110. The purpose of the Act, which supplements the Penal Code, is to establish guarantees by providing the court with full powers to monitor the execution of custodial sentences. It is based on a humanistic conception respectful of human rights, faith in human beings' capacity for improvement and the possibility for any prisoner to reintegrate himself in society as a

useful member who has forsworn crime. To this end, the framework for the enforcement of custodial sentences has been made consistent with the provisions of the amended 1994 Constitution, and recommendations at the national and international levels have been incorporated into positive law.

111. The new Act provides for treatment based on a progressive prison regime, and gives priority to individualized treatment and a smooth and systematic transition from closed to open establishments, incorporating a broad range of alternative procedures which may become criminal sanctions in their own right in the near future. Some innovations worthy of mention are the early-release programme (arts. 35-40), conditional release, day prison (art. 41), night prison (arts. 42-44), house arrest (arts. 32 and 33), social reintegration centres (arts. 50-53) and the new role of the enforcement judge.

112. The information below relates to the prison population as at November 1997:

(a) Total number of prisoners: 6,112;

(b) Number of prisoners per 100,000 inhabitants: 18.74;

(c) Number of prisons throughout the country: 26, 6 open prisons and 2 facilities for young adults;

(d) Prison capacity: 6,017;

(e) Undercapacity: -95;

(f) Number of prison staff: 7,464;

(g) Number of staff per prisoner: 1.17 warders;

(h) Number of prisoners by sex: female, 518; male, 5,594;

(i) Number of convicted prisoners: 3,364;

(j) Number of unconvicted prisoners: 2,681;

(k) Recidivism rate: 17.98%;

(l) Percentage of illiteracy among prisoners: 0.29%;

(m) Table indicating average age of prisoners:

Under 21	330
21-25	1 023
26-29	1 209
30-39	2 072
40-49	972
50-59	376
over 59	130

(n) Table indicating most frequent offences:

Offences against property	33.2%
Offences against the person	14.8%
Offences against honesty	4.5%
Offences against the Administration	1.9%
Offences against public security	1.4%
Offences against liberty	1.1%
Offences against public authority	1.02%
Offences against honour	0.1%
Offences against marital status	0.08%
Offences against public order	0.20%
Offences provided for in special laws	23.3%
Not specified	15.4%

The percentage shown for offences against property relates to prisoners held in 1996 in FPS facilities who have violated the provisions of Title VI of the Penal Code: theft, robbery, extortion, misrepresentation and other types of fraud, usury, bankruptcy and other types of punishable debts, illegal seizure and injury.

(o) Table showing number of reported deaths in prison and their causes in 1996:

Cardio-respiratory arrest	39
Presumed accident	1
Suicide	3
General infection	1
Serious injury	2
Cancer	1
Abdominal aneurysm	1
Skull fracture	1
Sudden death	1
Severe burns	1
Presumed suicide unsubstantiated by judicial decision	1
Violent death	1
"Escitilico Escanatoso" syndrome	1
Natural causes	1
TOTAL	55

Article 11

113. Imprisonment for debt was abolished in the Argentine Republic by Act No. 514 of 1872.

Article 12

114. The right to freedom of movement within Argentina is fully guaranteed, and there are no requirements or formalities that impede its exercise.

115. With regard to foreigners residing in the Republic, freedom of movement is guaranteed even in cases where such residence is made conditional upon the foreigner being domiciled in a particular region of the country. On this point, reference may be made to the information provided in relation to article 13 of the Covenant.

Article 13

116. Argentina's readiness to receive foreigners and its firm tradition concerning migration were reflected in the Constitution of 1853 and the amendments thereto. Net immigration includes nearly 3 million Europeans, who came between 1880 and 1914 in search of a better living, and thousands of displaced persons and refugees from Slovenia, Croatia, Russia, Poland and Hungary, who fled from the crises and persecutions that took place during the great wars, were generously welcomed by Argentina.

117. Most of the resettlement projects for European refugees were conducted in coordination with the Intergovernmental Committee for European Migration - now the International Organization for Migration - and UNHCR after its creation in 1951. The refugees were documented by the Argentine State, and were integrated into society and found work.

118. Argentina has received more than 50,000 refugees and displaced persons in the last 80 years, many coming from neighbouring countries and seeking asylum owing to the breakdown of democratic processes in Latin America in the 1970s; 12,000 of them continue to be protected by UNHCR, with nearly 600 receiving practical assistance.

119. The country is at present host to refugees from more than 20 countries in the Americas, Africa, Asia and Europe (Angolans, Liberians, Laotians, Cambodians, Peruvians, Tamils and Cubans, among others), who are being assisted by the Argentine Catholic Commission for Migration and the Tolstoy Foundation.

120. Argentina signed the Convention relating to the Status of Refugees in 1951 and ratified it 10 years later, while the Protocol of 1967 was ratified in the same year.

121. The geographical reservation was lifted in 1984 and, under the first democratic Government after the military regime, the Refugee Eligibility Committee was created as the body responsible, under the Ministry of the Interior and with representatives of that Ministry, the Ministry of Foreign Affairs and UNHCR, for considering applications received.

122. Progress has also been made concerning refugee protection with the institution of a special procedure to deal with requests for extradition in recognized cases and the enactment of other subsidiary legislation affording refugees the opportunity of employment in the local labour market.

123. During the 1980s efforts were coordinated through UNHCR for the voluntary repatriation of Bolivian, Chilean and Uruguayan refugees desiring to return to their countries as a result of the processes of democratization. Meanwhile, other such nationals were allowed to stay in the country if they wished to do so because the conditions for their return were not guaranteed.

124. With regard more specifically to migration, various measures were taken between 1983 and 1992, as part of exceptional migrant regularization processes, to permit the lawful establishment and documentation of more than 300,000 foreigners, most of them from neighbouring countries.

125. Studies are being conducted at present with a view to the formalization of agreements with the Republics of Bolivia and Paraguay - the countries from which most immigrants are now coming - to streamline procedures for dealing with their nationals. For this purpose, account is being taken of the experience gained with Peruvian nationals in similar circumstances.

Grounds for the expulsion of foreigners by the National Directorate for Migration

126. The General Migration and Immigration Promotion Act passed in 1981 defines in Title IV, Chapter II (arts. 37-39), the situations in which the expulsion of a foreigner from Argentina may be effected by the National Directorate for Migration:

(a) Confirmation of the foreigner's unlawful entry or sojourn;

(b) Violation of the provisions of the Act and annulment of the foreigner's temporary, transitory or unconfirmed residence status;

(c) Entry via an unauthorized location or evading immigration controls, immediately after the foreigner's entry when confirmed.

127. The above-mentioned articles are regulated by Title IV (arts. 80-95) of Decree No. 1434/87, as amended by Decree No. 1023/94.

128. The following articles of the Act (Chap. III, arts. 40-43) specify the precautionary measures that can be applied by the above-mentioned Directorate (as the body responsible for enforcing the enactment); it may order the foreigner's detention once an expulsion order has been issued, for the sole purpose of giving effect thereto; and, after such detention, it can arrange for the foreigner to be released on bail or surety.

129. Articles 16 and 20 of the Act set out the grounds for cancellation of the various kinds of residence permit (permanent, temporary or transitory) issued to foreigners. They provide that a foreigner's permanent residence permit may be cancelled (a) within two years of its issuance if such residence is subsidized wholly or partly by the State or the foreigner has been authorized effectively to reside in a particular area of the country, and the agreed conditions have not been fulfilled ("effective residence" in no way limits freedom of movement or freedom to leave the country temporarily);

or (b) if the foreigner remains abroad for more than two years, while being eligible to stay for up to six consecutive years. The Act provides that absence for certain purposes (public duty and activities, studies or research of benefit to the country) will not entail loss of resident status.

130. Articles 19 and 20 state that the enforcing authority can make the issuing of a permit conditional upon temporary or transitory residence in particular areas of the country. Such residence permits may be cancelled if the reasons for their issuance cease to obtain.

Grounds for the expulsion of foreigners by the Ministry of the Interior

131. Article 95 of the above Act empowers the Ministry of the Interior to expel foreigners, whatever their migration status: (a) if they have been convicted of a serious offence - and have received a custodial sentence of more than five years - once they have served their sentences; or (b) if they have engaged in activities, within the country or abroad, which affect social harmony, national security or law and order in Argentina. These measures may be appealed to the Executive.

132. Chapter IV (arts. 44-47) sets the penalties for unauthorized re-entry. The prohibition of re-entry is also an optional measure applicable in such cases as may be determined by the Directorate for Migration, but persons expelled under article 95 of the Act may re-enter only with the authorization of the Ministry of the Interior. Persons found guilty of violating these provisions are liable to imprisonment for between three months and one year, the penalty being doubled if the offender re-enters via an unauthorized crossing or avoids immigration controls.

133. The above-mentioned expulsion measures may be waived if the person concerned has children, parents or a spouse of Argentine nationality (in the latter case, the marriage must have been contracted prior to the offence) or if the person had been resident in the country immediately beforehand for more than 10 years.

134. Article 21 of the regulations furthermore establishes the general disqualifications for residing or staying in the country under any kind of migrant status. This basically applies to persons who:

(a) Are serving custodial sentences of more than two years for common crimes, or are being prosecuted for such crimes;

(b) Are accused of trafficking or have trafficked in narcotics;

(c) Are engaged in prostitution;

(d) Are or have been trafficking in persons;

(e) Have no craft, trade, profession or other lawful means of earning a living or are found to conduct themselves in a manner which is conducive to crime, contrary to morals or customs or, in the opinion of the Ministry of the Interior, casts doubt on their ability to integrate into society;

(f) Have a record which suggests that they might jeopardize security, public order or social harmony;

(g) Have been expressly forbidden by a competent authority to enter or re-enter the country or have entered the country without passing immigration control;

(h) Have stayed illegally in certain situations; or

(i) Have been caught in flagrante engaging in occupational or gainful activities without authorization.

135. Although the law includes among the grounds for general disqualification the fact that a person is suffering from a contagious disease presenting a danger to society, or from mental derangement or from a total physical or mental disability, such persons may be admitted on an exceptional basis by reasoned decision of the National Directorate for Migration, with the support of the Ministry of the Interior, subject to certain relations of kinship with Argentine nationals or permanent residents and provided that they meet the requirements laid down in article 23 of the same regulations.

136. Article 22 of the regulations lists the relative disqualifications for permanent or temporary residence in the country, from which exceptions may be made for foreigners in a similar way to that described in the above paragraph.

Article 14

137. Article 18 of the Constitution states: "No inhabitant of the Nation may be punished without previous judgement based on a law in force prior to the act giving rise to the proceeding, or tried by special commissions or removed from the jurisdictions designated by law prior to the act in question. No one may be obliged to testify against himself, and no one may be arrested without a written order from the competent authorities. Defence of the person and his rights before the courts is inviolable."

138. Accordingly, no condition is imposed upon access to justice and no distinction is made in respect of available resources. The Constitution further states:

> "Art. 116. The Supreme Court and the lower courts of the Nation are empowered to hear and decide all cases relating to matters governed by the Constitution and the laws of the Nation, except as provided in article 75, paragraph 12 (in rem or in personam jurisdiction of the provinces), and by treaties with foreign nations: cases concerning foreign ambassadors, ministers and consuls; cases under admiralty and maritime jurisdiction; matters in which the Nation is a party; and cases

arising between two or more provinces, between one province and the residents of another province, between the residents of different provinces, or between one province and its residents against a foreign State or citizen.

Art. 117. In all the aforementioned cases, the Supreme Court shall exercise its appellate jurisdiction in accordance with such rules and exceptions as Congress may prescribe, but in all matters concerning foreign ambassadors, ministers and consuls, and in those matters in which a province is a party, the Court shall exercise original and exclusive jurisdiction."

139. The new Code of Penal Procedure, which was mentioned in the information relating to article 9 and is applicable at the federal level, in the Federal Capital and in national territories, states:

"Art. 1. No one may be tried by judges other than those designated in accordance with the Constitution and having jurisdiction under its regulatory laws, or be punished without previous judgement based on a law in force prior to the act giving rise to the proceeding and substantiated in accordance with the provisions of that law, or be considered guilty unless an enforceable judgement rebuts the presumption of innocence which all accused persons enjoy, or be criminally prosecuted more than once for the same offence."

140. Article 197 of the Code stipulates that, at the first opportunity, including during police custody, but in any event before the questioning, the judge shall invite the accused to choose a lawyer; if the accused does not do so or if the lawyer does not immediately accept the case, the judge shall proceed in accordance with article 107 (lawyer appointed by the court or chosen by the accused from among the lawyers registered with the bar association). Defence counsel may talk to his client immediately before the client's statement is taken by the police (article 184, penultimate paragraph, only admissible if the accused gives urgent reasons for wishing to make a statement) or by the examining magistrate; otherwise the proceedings are invalid. If the accused is left at liberty, he shall specify his domicile. If he is held on remand, the person indicated by him shall be informed of the place at which he is being held, and this information shall be made available to relatives and lawyers.

141. The legislation in force defines the following stages of criminal procedure:

(a) Examination stage: This is in the hands of an examining magistrate, who will proceed directly and immediately to investigate any offences which may have been committed within his jurisdiction (art. 186); the magistrate will, at the first opportunity, invite the accused to choose a lawyer and, if the accused does not do so, will officially appoint counsel for him on pain of nullity of the proceedings (art. 188); the Government Procurator will be able to take part in, i.e. oversee, all steps at the examination stage (art. 189); defence lawyers will have the right to attend

those proceedings considered to be definitive and not reproducible, including the taking of statements from witnesses unlikely to be present at the trial stage (art. 191); advance notice must be given of the proceedings (art. 192); the judge may allow the defence lawyers to attend other examination proceedings as long as this does not obstruct their progress (art. 193) and in such cases they will be able to propose measures, ask questions, make whatever observations they deem pertinent and call for any irregularity to be recorded (art. 194). The Code further provides that the examination stage shall be confidential in respect of third persons and, as a rule, public for the parties. This stage may be concluded in one of three ways:

(i) When the public prosecutor, in serious or complex cases, reports his findings and requests that the matter be remanded for trial, and the accused's counsel concurs therewith and does not enter any special plea or oppose the remand of the case for trial (art. 323);

(ii) When the judge orders the case to be remanded for trial, in accordance with the prosecutor's request, after dealing with any objection to such action by counsel for the defence;

(iii) When a motion for dismissal of the case, which may be requested by counsel, is granted (art. 327).

(b) Trial stage: This will be oral and public (unless otherwise provided for the sake of morality, propriety or public order) to ensure the transparency and security which flow from the supervision to be exercised by the parties in the proceedings;

(c) Judgement: Immediately after the trial, the judges will deliberate in private with a view to passing judgement, which must be properly substantiated;

(d) Remedies: Provision is made for the remedies of reconsideration, appeal, cassation, unconstitutionality, complaint and review.

Article 15

142. The principle of non-retroactivity of the criminal law in Argentina is established in article 18 of the Constitution and in specific provincial enactments. The Constitution states:

> "No inhabitant of the Nation may be punished without previous judgement based on a law in force prior to the act giving rise to the proceeding, or tried by special commissions or removed from the jurisdictions designated by law prior to the act in question."

143. At the international level, Argentina strongly supports the proposal to establish an international criminal court to try war crimes, crimes against humanity and acts of genocide, on the understanding that this proposal

embodies the fundamental principle of non-retroactivity in the application of criminal law and contributes subsidiarily to ensuring that those responsible for such acts do not go unpunished in national courts.

Article 16

144. The provisions mentioned in the initial report (CCPR/C/45/Add.2, paras. 117 and 118) are still applicable.

Article 17

145. Further to what was stated in the second periodic report (CCPR/C/75/Add.2, para. 62) regarding the current provisions of the Code of Penal Procedure, it should be noted that article 18 of the Constitution reads:

> "... A person's home, correspondence and private papers are inviolable, and the law shall determine in what cases and on what grounds the search or seizure thereof may be effected."

146. Article 19 of the Constitution states:

> "The private actions of human beings which in no way offend public order or morality or injure a third party are a matter for God alone and lie outside the competence of the judiciary."

147. As regards case law on this subject, it is important to note the views expressed by the Supreme Court in what constituted a "leading case" relating to respect for honour and privacy:

> Indalía Balbín v. Editorial Atlántida S.A. (damages)
>
> "... article 19 affords legal protection of an area of individual autonomy that comprises feelings, habits and customs, family relations, economic status, religious beliefs, mental and physical health and, more generally, the actions, facts or details which, having regard for the ways of life accepted by the community, are confined to the individual, so that knowledge or disclosure of them by other persons would represent a real or potential danger to privacy. Indeed, the right to privacy covers not only the domestic sphere, the family circle and friendship, but also other aspects of the spiritual and physical identity of the individual, including the inviolability of his body and image; hence no one may interfere in a person's private life or violate fields of his activity not intended to be made public without the consent of that individual or of relatives empowered to give such consent, and intervention may be justified only by law where there exists a higher interest to safeguard the freedom of others, to protect society and decency, or to prosecute crime ..."

148. Following this reasoning, in the judgement of 6 April 1983 in the Marcelo Bahamondez (precautionary measure) case, two members of the Supreme Court stated:

> "With regard to the constitutional framework of the rights of the individual, it may be said that case law and doctrine see this as including privacy, conscience, the right to one's own separate existence and the right to make fitting use of one's own body. In point of fact, when article 19 of the Constitution says that 'The private actions of human beings which in no way offend public order or morality or injure a third party are a matter for God alone and lie outside the competence of the judiciary', it grants all persons a prerogative to benefit from their deeds, from their work, from their own body, from their own life, from whatever is theirs. It has ordered human coexistence on the basis of attributing to the individual a domain subject to his own will, and this capacity duly to work free of impediment entails the capacity to react to or oppose any proposal, possibility or attempt to narrow the limits of that prerogative. The present case is concerned with dominion over one's own body and hence with a good recognized as belonging to each individual and guaranteed by article 19 of the Constitution. That constitutional provision is given substance by man, who leads his life by means of actions which are the expression of his work at liberty. Thus, life and liberty form the infrastructure upon which the constitutional prerogative enshrined in article 19 of the Constitution is based."

149. Furthermore, with regard to action concerning personal data kept in public or private records, the Constitution states in article 43, paragraph 3:

> "These proceedings may be initiated by any person in order to obtain information about the content and purpose of data relating to himself contained in public or private records or data banks intended for reports and, if the information is false or discriminatory, to demand that it be destroyed, corrected, made confidential or updated. The confidentiality of journalists' sources of information may not be affected."

Article 18

150. As indicated in the core document forming part of the reports of States parties (HRI/CORE/1/Add.74), which was submitted by the Argentine Republic on 1 July 1996, without prejudice to the recognition of freedom of worship in the first Argentine Constitution of 1853, it can be said that Argentina is basically a Catholic country owing to its historical and cultural traditions. Article 2 of the current Constitution accordingly states that "the National Government supports the Apostolic Roman Catholic faith", referring to the financial support given to the institutions of the Apostolic Roman Catholic Church.

151. Since the constitutional reform of 1994, membership of the Apostolic Roman Catholic faith is no longer a requirement for becoming President of the Republic, as it was under the Constitution of 1853/1860. Furthermore, the members of religious communities of a certain importance in the country enjoy

paid religious holidays. For example, in respect of members of the Jewish community, Act No. 24,571 (see annex) provides for paid holidays during the main Jewish festivals - the Jewish New Year (Rosh Hashana), the Day of Atonement (Yom Kippur) and Passover (Pesach) - and, as regards members of the Muslim community, Act No. 24,757 (see annex) of 28 November 1996 declares the day of the Muslim New Year (Hegira), the day following the end of Ramadan (Id al-Fitr) and the day of the Festival of the Sacrifice (Id al-Adha) to be non-working days for all inhabitants professing the Islamic faith.

152. As regards case law on this matter, in separate votes of Justices of the Supreme Court in the Marcelo Bahamondez (precautionary measure) case mentioned above, it was stated:

> "That since no one's rights other than those of Bahamondez are affected in this case, he can hardly be obliged to act against the dictates of his own religious conscience;
>
> That peaceful coexistence and tolerance also require respect for the religious values of the conscientious objector, under the conditions set forth, even though they may not be shared by the majority of society. Otherwise, on the pretext of protecting an erroneously conceived public order, the conscience of certain persons might be constrained and they could be discriminated against arbitrarily by the majority, causing prejudice to the healthy pluralism of a democratic State."

153. Furthermore, as indicated in the report on "The question of conscientious objection to military service" submitted by the Secretary-General of the United Nations to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/99, paras. 8 and 24), the President of the Argentine Republic, by Decree No. 1537 of 29 August 1994, made military service voluntary. Voluntary military service was then regulated by Congress through Act No. 24,429, which was passed on 14 December 1994 and promulgated on 5 January 1995. The regulation of this Act was effected by Decree No. 978 of 6 July 1995. With reference more specifically to article 19 of the Act, which provides that in the exceptional event that the quotas set are not filled by voluntary recruits, the Executive may, on substantiated grounds and with the statutory authorization of Congress, conscript citizens reaching 18 years of age in the year in question for service for a period of no more than one year, the following article states: "Citizens who at the time of the conscription referred to in the above article are found to be prevented from undergoing military training, because they profess profound religious, philosophical or moral beliefs opposed in any circumstance to the personal use of arms or the joining of military units, shall perform alternative social service for the period laid down by the regulations, which may not be more than one year."

Article 19

154. Without prejudice to what was stated in the earlier reports submitted to the Committee, it is appropriate to add the following:

155. Article 14 of the Constitution reads:

> "All inhabitants of the Nation enjoy the following rights in accordance with the laws that regulate their exercise, namely: the right ... to publish their ideas through the press without prior censorship".

156. Furthermore, article 32 states:

> "The Federal Congress shall not enact laws restricting freedom of the press or establishing federal jurisdiction over it."

157. As a general rule, article 1071 bis of the Civil Code of the Argentine Republic states:

> "The regular exercise of an individual right or the fulfilment of a legal obligation cannot constitute an unlawful act. The law does not protect abuse of rights. Any act that runs counter to the purposes which the law envisaged when recognizing the said rights or exceeds the limits imposed by good faith, morality and decency shall be deemed abusive."

158. In view of this rule of civil law, the issue which must be examined is whether the right in question has been exercised within the established limitations, i.e. in a manner that is not abusive.

159. With specific reference to freedom of expression, the decision of the Supreme Court in its ruling of 12 November 1996, applying the American doctrine of "real malice", established that when erroneous information is published, it is inappropriate to impose a sanction if the person who published the information neither knew it to be false nor acted with obvious disregard for its veracity. This decision furthermore consolidated the Court's doctrine regarding the distinction applicable in the case of public officials or public figures to guarantee a broad and free debate on public affairs and matters concerning such officials or figures.

160. In the above judgement, the Supreme Court reiterated: "... the said right to freedom of expression and information is not absolute in respect of such responsibilities as the legislator may determine in the light of abuses occasioned by its exercise, i.e. the commission of criminal or unlawful civil acts since, while freedom of expression has a prominent place in the republican system which makes particular caution necessary when defining responsibilities connected with its application, it may certainly be affirmed that this does not mean securing the impunity of the press" (Rulings 311:609/Morales Solá Joaquín).

161. The evolution of the Supreme Court's case law and its application by the lower courts following this precedent will help to confirm the relevance and scope of this doctrine.

162. As regards the right to criticize public officials, important decisions have been recorded. One example is the judgement of Appeal Court Division VI, which dismissed a complaint against a journalist lodged by an Appeal Court judge for criticism the journalist had made in a book he had written. This

decision dwells at length on the tolerance that must be shown by persons holding public office towards public criticism. Similar views were expressed by the court which dealt with the complaint filed by the President of the Republic against journalist Horacio Verbitzky.

163. Furthermore, Federal Administrative Appeal Court (Division III), on 17 December 1997, upheld a judgement at first instance in favour of an NGO that had brought an action, based on constitutional rights and the international human rights instruments to which Argentina is a party, calling for a review of the decision of the Argentine Federal Police denying it information about police personnel killed or wounded in the line of duty and the rank they had held between 1989 and 1995. The court of first instance found that the attitude of the police in denying such information "not only violates constitutional rights, but also infringes such uncontested achievements as the right to information" and maintained that this right belongs to "the press, the supervisory bodies (Office of the Auditor General of the Nation, Ombudsman, etc.) and any citizen interested in public affairs". This, it added, "is no more than the direct application of the republican principle of making acts of government public". For its part, the Court of Appeal added, inter alia, that the request is "connected with scientific research and with the defence of human rights", and therefore dismissed the appeal by the police.

Article 20

164. Act No. 23,592 (see annex) of 21 August 1985 on discriminatory conduct remains in force; it permits a civil action to be brought at the request of the injured party against anyone who arbitrarily violates, restricts or in any way impairs the full exercise on an equal footing of basic rights and freedoms, especially discriminatory acts or omissions motivated by considerations such as race, religion, nationality, ideology, political or trade-union opinion, sex, property, social status or physical characteristics. In such cases, the party responsible will be required to annul or desist from the discriminatory conduct and make restitution for the moral damage and physical injury caused.

165. The same Act increases the penalties laid down in the Penal Code when the crime is committed out of a desire to persecute, or hatred of, a race, religion or nationality, or with the aim of destroying, wholly or in part, a national, ethnic, racial or religious group. Article 3 states:

> "Persons participating in an organization or engaging in propaganda based on ideas or theories of the superiority of a race or group of persons of a particular religion, ethnic origin or colour, the objective being to justify or promote racial or religious discrimination in any form, shall be punished by one month's to three years' imprisonment."

166. Case law corroborates that this stipulation is in effect and fully enforced. By way of example, the trial of former General Carlos Guillermo Suarez Mason in early December 1996, on charges of "encouraging racial or religious hatred" in statements detrimental to the Jewish community made and published in the local press, may be cited. The Federal Court based its judgement on article 3 of Act No. 23,592, stating that although the

Constitution upheld freedom of expression, that should not be interpreted as licence to "shield offences" or infringe the rights of third parties.

167. Similarly, in July 1996 the press carried reports that the then Minister of Justice, Mr. Rodolfo Barra, had once been a militant in Argentine neo-Nazi youth groups. Given that there was a reasonable doubt, and despite the time that had elapsed since the incidents reported, these reports led to the Minister's resignation being requested and received.

168. Argentina has also submitted periodic reports under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination. Its eleventh, twelfth, thirteenth and fourteenth reports were submitted on 31 January 1997 and discussed on 12 and 13 August 1998 (CERD/C/299/Add.11).

Article 21

169. Beyond what is stated in previous reports, the right of peaceful assembly is amply guaranteed in Argentina. This is clear from the legislation governing the establishment of workers' unions, political parties (of which more below) and the right to strike.

170. Moreover, a large number of institutions with their own distinct characteristics, impact and modes of operation have been established in Argentina. One thing they have in common is that they all open new channels for participation in public life, as may be seen from the diversity of their objectives: serving as channels for reporting instances of corruption; serving as channels for reporting human rights violations; assembling organized groups to campaign peacefully against social inequality; working effectively to educate the public about civil rights and individual freedoms, and so forth. The freedom of action they enjoy is clear proof that the right under discussion is in full effect and actively exercised.

Article 22

171. Argentina has ratified the following International Labour Organization (ILO) conventions, which are relevant to this article of the Covenant:

Convention	Ratification registered
Freedom of Association and Protection of the Right to Organize	10 January 1960
Right to Organize and Collective Bargaining 24 September 1956	
Labour Relations (Public Service)	21 January 1987
Collective Bargaining	29 January 1993

172. Article 14 bis of the Argentine Constitution stipulates that:

> Work in its various forms shall enjoy the protection of the law, which shall guarantee the worker ... free and democratic trade union organization subject to no other formality than registration in a special register.

173. The Argentine legal system reaffirms this constitutional principle and the relevant international provisions, and regulates the establishment, operation and activities of workers' trade unions in Act No. 23,551, promulgated by the Executive on 14 April 1988 and published in the Boletín Oficial on 22 April 1988, and its enabling Decree No. 467/88 of 14 April 1988.

174. The first section of the Act, which relates to the protection of trade union freedom, embodies the constitutional principle of "free and democratic trade union organization subject to no other formality than registration in a special register" (art. 14 bis). The Act incorporates the content of the relevant international agreements which have been ratified, particularly ILO Conventions Nos. 87, 98, 151 and 154.

175. Article 4 of the Act determines to which rights workers are and are not entitled and its first subparagraph sets forth the right "freely and without the need for prior authorization to form trade union associations". Workers have the right to establish or found trade unions "of their own choosing" (ILO Convention No. 87, art. 2). This implies dual protection both in respect of the State - there is no need for prior authorization to exercise the right to found a trade union - and in respect of employers, who are required to refrain from any form of interference intended to promote, impede or hinder workers' freedom to establish trade unions. On account of the special nature of trade unions, freedom to establish them is subject to regulation by the law, provided it does not impair this guarantee (ILO Convention No. 87, art. 8). The right of workers to found trade unions is comprehensive. Article 21 of the Act regulates the provisions of the Constitution in a reasonable manner and sets forth only formal requirements with which the application for registration has to comply. Trade unions are registered on submission to the Ministry of Labour of their application containing the following:

(a) Its name, address, assets and the background to its founding;

(b) A list of members;

(c) The names and nationality of the members of its governing organ; and

(d) Its statutes.

176. The Labour Administration, which is the authority responsible for enforcing the Act, checks the documentation submitted and issues a decision authorizing registration and issuing a registration number. From the date of registration (which corresponds to the authorization referred to in article 55 in fine of the Civil Code), the association acquires the status of a legal

person and may acquire rights and take on contractual obligations in conformity with the relevant provisions of Act No. 23,551.

177. As to the right of membership, article 4 (b) of Act No. 23,551 recognizes the trade union right of workers to join, not to join or to leave existing associations, thereby giving effect under domestic law to the last part of article 2 of ILO Convention No. 87, in accordance with which "workers ... shall have the right ... to join organizations". This reflects the individual right of workers to withdraw from the trade union with or without reason. The right to join is regulated in detail by article 2 of Decree No. 467/88, which lays down restrictive conditions for refusing membership on the following grounds:

(a) Failure to satisfy the formal requirements set forth in the statutes;

(b) Not being employed in the activity, occupation, trade, category or firm represented by the trade union;

(c) Expulsion from a trade union less than one year previously;

(d) Having been indicted or convicted for an offence against a trade union.

The Act stipulates that failure of the trade union to respond within a period of 30 days entails its acceptance of the application for membership.

178. The regulations provide that a decision to refuse membership must be taken through the association's internal procedure and the governing body is required to set the facts before the decision-making organ, with provision for appeal to the labour courts. They also relate to the procedure for giving up trade union membership, requiring such decisions to be taken by the governing body within 30 days; the absence of a response on its part signifies acceptance of the application to give up membership and means that the worker may inform the employer of his decision so that his membership contributions may no longer be withheld from his salary; if the employer refuses or proves reluctant, the worker has the right to refer the matter to the Ministry of Labour and Social Security.

179. In chapter II entitled "On joining and giving up membership", articles 12 to 15 of Act No. 23,551 define the right to join in positive terms as the right to become a member of an association. According to article 12, "Membership of trade union associations shall be open, in accordance with this Act and its statutes, which must be in conformity with the Act". This right is protected by the provisions of article 47 of the Act, which protects all workers or trade union associations prevented or hindered from normally exercising the right to take part in trade union activity.

180. In addition, article 53 defines unfair practices on the part of employers as any form of conduct contrary to the ethics of professional labour relations and constituting a collective offence committed by an employer or employers' organization. Such unfair practices are defined in paragraph (c) as obstructing, hindering or preventing workers from belonging to an

association governed by the regulations, and in paragraph (d) as encouraging or sponsoring their membership of a particular trade union association.

181. Article 54 determines the grounds for legal action to penalize unlawful conduct. Article 55 sets forth the legal consequences and the range of penalties applicable to persons guilty of the collective offence. By defining unfair practices, article 53 offers one means of protecting trade union activity. All such means are based on the principle of trade union freedom. The Act requires members to be aged at least 14 and anyone who applies to join a professional association of workers has to be a worker employed in the activity in question or in an activity related to that of the trade union to which he applies or must exercise the trade, profession or skill represented by the trade union or provide services in the firm whose workers have formed a trade union association, in conformity with the requirements of article 10 (c) of the Act.

182. The only grounds for refusing an application for membership contained in the statutes of trade unions are those listed in article 2 of Decree No. 467/88.

183. The right to found trade unions is no longer restricted to a particular category of workers, such as government or private employees, as was the case under all previous legislation. No distinction is made between office and industrial workers or manual and intellectual workers; a single trade union composed of executives (hierarchy), shop-floor workers, professionals and blue-collar and white-collar workers may thus be formed. The right freely and autonomously to found trade unions is interpreted broadly.

184. The Act uses the modern-day term "worker", which covers manual and intellectual workers in the private sector and in the State sector. Separate conceptualization of the term "public employee" as distinct from the term "worker" has always been without practical implications for the trade unionism of State workers, as the structuring of trade unions for State workers took place alongside that of other associations and their right to form trade unions has never been called into question. There is no reason why a trade union should not exercise collective rights such as collective bargaining, the right to strike and other means of conflict resolution. Article 10 of the Act refers to the types of trade union associations that may exist: "The following shall be considered trade union associations of workers: those formed by

(a) Workers engaged in a single activity or related activities;

(b) Workers exercising the same trade or profession or in the same category, even if they are employed in different branches;

(c) Workers providing services within the same firm.

The Act does not introduce any innovations in types of trade union and does not require them to re-apply for legal status, but it does introduce a legislative policy which is designed to influence trade union structure in future and which is limited to the requirements for granting trade union status.

185. A characteristic phenomenon of recent decades has been the establishment of unions representing the same occupation or professional trade unions, known as executive staff unions, a term used in comparative labour theory. An example is the metalworkers' trade union for shop-floor workers and the union representing supervisors in the metalworking industry.

186. The unionization of workers in the same occupation and of professional staff jointly or separately was characteristic of State employees, particularly in State enterprises, although such trade unions also exist in the private sector.

187. The current Act, No. 23,551, has abolished the restriction under the previous Act, No. 22,105, barring joint membership of shop-floor workers and supervisory staff in the same trade union.

188. In the exercise of trade union freedom, workers are entitled to establish any of the types of trade union indicated in article 10 of Act No. 23,551. A trade union representing a variety of trades is the only kind not allowed by the Act and its registration may be refused on these grounds. Current Argentine legislation respects trade union rights and places no restrictions on workers who, in the exercise of their rights, decide to establish a trade union. No minimum number of members is required for a trade union association to be granted registration.

189. The right to form federations is expressly provided for in Act No. 23,551. The rights which workers may collectively exercise include the right to "adopt the type of organization they deem appropriate, to approve its statutes and to form higher-level associations, to affiliate themselves to those that exist or to withdraw from them ..." (art. 5).

190. Article 5 of Decree No. 467/88 regulating article 12 of the Act stipulates that:

> "Federations may not refuse applications for membership from associations of the first level representing workers by activity, trade, occupation or category specified in the regulations of the federation concerned. Likewise, confederations may not refuse federations, unions and professional associations that meet the requirements provided for in the regulations of the confederation concerned. Trade union associations at the second and third levels may cancel the membership of affiliated trade union associations only by means of a decision adopted by a secret ballot of 65 per cent of the delegates present during an extraordinary congress convened for the purpose. Trade union associations may withdraw from those at the higher level to which they belong, without any restriction."

191. In chapter I, entitled "Forms of trade union asscciations", article 11 of the Act lists the types of trade union associations according to level:

> "Trade union associations may take one or more of the following forms:
>
> (a) Unions of various types;

(b) Federations of associations of the first level;

(c) Confederations which group associations covered by the preceding subparagraphs ...".

192. The terms used in the Act are not binding on workers; unions may describe themselves as associations or unions, but it should be stressed that, whatever terms are used, the principles of trade union freedom, autonomy and internal democracy must be respected. The choice of form of organization depends on the workers. Whatever the structure, it must comply with the principles and procedures of internal democracy; freedom to join must be allowed by associations at the first and second levels and provision must be made for right to withdraw or resign.

193. In conformity with the provisions of article 20 of the Act the deliberative body must "approve ... affiliation to or withdrawal from national or international associations ...". Article 18 of Decree No. 467/88 regulating article 20 of the Act stipulates that "Except as provided in article 36 of this Act, membership of national or foreign associations whose statutes authorize them to participate in the management, administration or handling of the property of their members shall be prohibited".

Article 23

194. Although current civil law does not precisely define what a family is, the following can be found within it:

(a) Marriage: man and woman having expressed their full and free consent before an authority empowered to solemnize marriage;

(b) Filiation: may take place naturally or through adoption. Natural filiation may be matrimonial or extramatrimonial. Both, like full adoption, have the same effects;

(c) Lineage: the connection between all individuals of both sexes descended from a single stock. This may be by consanguinity (in direct line: grandparents, parents, offspring etc., or collaterally: siblings, aunts and uncles, cousins, etc.) or by affinity (in direct line: son-in-law, daughter-in-law, mother-in-law, father-in-law; collaterally: brothers- and sisters-in-law, etc.).

195. By law, a woman may contract marriage at the age of 16, and a man at the age of 18.

196. Divorce exists in Argentina. The grounds for divorce are the same for men and women, and are set forth in articles 214, 215 and 216 of the Civil Code:

"Art. 214:

1. Those established in article 202 (adultery; an attempt by one spouse upon the life of the other or their offspring, whether common or

not, as principal, accomplice or instigator; incitement by one spouse of the other to commit crimes; serious abuse; wilful and malicious desertion);

2. Actual separation of the spouses with no desire to come together for an uninterrupted period of over three years, within the bounds and in the manner laid down in article 204.

Art. 215: Three years after the marriage has taken place the spouses may in a joint submission draw to the attention of the competent court the existence of serious grounds making life together psychologically impossible and ask to be divorced, as provided in article 236.

Art. 216: Divorce may be decreed by conversion of a definitive separation order, subject to the time limits and forms laid down in article 238."

197. Custody of separated or divorced parents' children under five is generally awarded to the mother, except where there are serious grounds affecting the interests of the minor. In reaching its decision, the court must take into consideration the best interests of the child in accordance with current Argentine law, which includes the Convention on the Rights of the Child.

198. The property regime in marriage is unique and mandatory. It comprises personal property, which the parties bring to the marriage or acquire later by inheritance or previous title, and incremental property, which is the property acquired during the marriage. When married life is ended by a divorce, each party keeps its personal property and the incremental property is shared equally between them.

199. Under current law, the spouses are responsible for each other's upkeep. In the event of separation or divorce, the party giving grounds must help the other, unless he or she also gave grounds, to maintain the economic level the two enjoyed while they lived together, due account being taken of the resources of both. If a spouse under such an obligation dies, although the marriage has been dissolved through a previous divorce the burden passes to his or her estate and the heirs must make provision for continuing to honour it before dividing the remaining property. Whether or not any guilt is assigned in the judgement, either spouse, lacking sufficient personal resources or reasonable means of acquiring them, is entitled to be provided by the other, provided he or she does have resources, with the wherewithal to subsist. All entitlement to maintenance lapses if the beneficiary remarries, cohabits or indulges in gross abuse of the other spouse.

200. The Family Assistance Obligations Failure to Honour Act (No. 13,944) lays down the penalties that apply in the event of failure to pay maintenance. Among other things it provides for between one month's and two years' imprisonment or a fine for a spouse not legally separated from the other through the other's fault. The Act also adds to article 73 of the Penal Code the stipulation that actions for failure to honour family assistance obligations in which the husband is the injured party shall be private actions stemming from the offence concerned.

Joint parental authority

201. Parental authority comprises the various duties and rights that parents have in respect of their children and their property with a view to their protection and total upbringing from conception onwards while they remain minors, unless they become emancipated.

202. It is exercised:

(a) In the case of children of the marriage, by the father and mother jointly provided they are not separated or divorced and their marriage has not been annulled. Action taken by either is presumed to have been taken with the consent of the other except as provided in article 264 quater, or if the other objects at the time;

(b) In the event of de facto separation, legal separation, divorce or annulment of the marriage, by the father or mother with legal custody, without prejudice to the other's right to have adequate contact with the child and to supervise its upbringing;

(c) In the event of the death, disappearance presumed dead, or withdrawal or suspension of the parental authority of either parent, by the other;

(d) In the case of a child not of the marriage who is recognized by just one parent, by the parent recognizing the child;

(e) In the case of a child not of the marriage who is recognized by both parents, by both, if they are living together; otherwise by the parent to whom custody has been awarded by agreement or judicial decision or whose custody has been recognized in summary proceedings;

(f) By whomever has been legally adjudged the father or mother of the child, if the child has not been voluntarily recognized.

203. Parents exercising parental authority have the right to raise, support and educate their children in keeping with their status and means, not only with the children's property but also with their own.

204. The obligation to support the child means meeting the child's needs for upkeep, education and recreation, clothing, housing, assistance and illness-related costs. The obligation does not lapse even when the child's needs arise out of his/her own misconduct.

205. If the father or mother fails in the obligation to provide support for the child, they may be sued for support by the child him/herself, assisted, if a young adult, by a special guardian, by any member of the family, or by the Government Procurator for Juveniles.

206. In accordance with article 306 of the Civil Code, parental authority lapses upon the death of the parents or children; upon the parents' (or the children's, with the parents' permission) entering a monastic institution; upon the children's reaching legal age; upon the children's legal emancipation, without prejudice to the continuance of the right to administer property acquired gratuitously, if the marriage takes place without authorization; and upon the adoption of the children, without prejudice to the possibility of reinstatement if the adoption is set aside or annulled.

207. On the other hand, article 307 of the Code sets out the grounds on which parents may be deprived of parental authority: if they are convicted as principals, co-principals, instigators or accomplices in a culpable offence against the person or property of any of their children, or as co-principals, instigators or accomplices in an offence committed by the child; if they desert any of their children, in respect of the child so deserted, even if he/she remains in the custody of, or is recognized by, the other parent or a third party; or if they endanger the child's safety or mental or physical health by ill-treatment, bad example, flagrant misconduct or delinquency.

208. The Code provides for suspension of parental authority for as long as a parent whose absence has been legally declared remains missing, and prohibition or disqualification in certain cases. It also states that exercise is suspended when parents entrust their children to establishments for the protection of minors. While parental authority is suspended for one parent, the other continues to exercise it; in the absence of the other parent, when the child cannot be placed in the care of a suitable consanguinary relative (near relatives being considered first) he/she will become a ward of the State (national or provincial).

209. Since the Civil Code was reformed by Act 23,515, no distinction has been made in Argentina in the treatment of children born within and out of wedlock. There are no legal limits on the number of children a couple may have.

210. It is important to remember that the National Council on Juveniles and the Family, which is a division of the Ministry of Health and Social Welfare, is still working on the tasks that led to its establishment by Decree No. 1606/90, as described in Argentina's second periodic report (CCPR/C/75/Add.1, para. 73).

211. Marriages registered in the city of Buenos Aires, January 1986-April 1997:

	1997	1996	1995	1994	1993	1992	1991	1990	1989	1988	1987	1986
Jan.	1 142	978	1 087	1 033	1 142	1 435	1 472	1 645	1 941	1 991	1 512	1 579
Feb.	1 146	1 077	950	921	1 050	1 115	1 180	1 355	1 496	1 627	1 066	1 216
March	1 716	1 994	2 186	1 967	2 043	2 259	2 148	2 601	2 712	2 948	1 977	1 751
April	1 777	1 556	1 486	1 699	1 723	1 897	1 977	1 912	2 203	2 473	1 604	1 771
May	-	1 259	1 099	1 203	1 123	1 168	1 485	1 416	1 562	1 845	1 061	1 202
June	-	902	1 003	1 065	927	1 025	1 157	1 321	1 596	1 851	933	1 051
July	-	1 190	1 110	1 241	1 262	1 415	1 389	1 455	1 798	2 177	1 383	1 257
Aug.	-	1 094	1 039	1 028	1 037	1 084	1 338	1 549	1 622	1 982	1 164	1 046
Sept.	-	1 403	1 442	1 577	1 418	1 530	1 649	1 816	2 079	2 380	1 588	398
Oct.	-	1 529	1 501	1 514	1 626	1 666	1 772	1 875	2 036	2 185	1 835	1 391
Nov.	-	1 904	1 904	1 785	1 820	1 819	2 231	2 384	2 389	2 669	2 288	1 601
Dec.	-	2 085	2 181	2 291	2 403	2 160	2 657	2 628	3 049	3 368	3 051	2 153
Total		16 971	16 988	17 324	17 574	18 573	20 455	21 957	24 483	27 496	19 462	16 416

Article 24

212. The 1994 reform of the Constitution gave the Convention on the Rights of the Child constitutional status in Argentina, together with other basic human rights agreements.

213. Pursuant to the new provisions of article 75, paragraph 23, of the Constitution, Congress must lay down a special, comprehensive social regime to protect unprovided-for children between gestation and the end of elementary education, and mothers during pregnancy and breastfeeding.

214. The Argentine legal system also makes provision for children's right to an identity; it affords protection for people's identities and augments the penalties for abduction, concealment and suppression of identity, and all penalties relating to trafficking in children.

215. The law on adoption (Act No. 24,779, annexed), on identification of newborns (Act No. 24,540, awaiting implementing regulations, see annex) and the reservation entered to the Convention on the Rights of the Child, Act No. 23,849, article 2, are proof that this right is fully in effect. The law on adoption amended article 328 of the Civil Code. In its new wording, the article recognizes the adopted child's "right to know its biological origins, and to have access to the adoption order once he or she reaches 18 years of age".

216. Since 1992 Argentina has had, within the Ministry of the Interior's Office of the Under-Secretary for Human and Social Rights, a National Commission on the Right to Identity with the principal tasks of expediting the search for missing children and determining the whereabouts of abducted and missing children whose identities are unknown, children born to mothers illegally deprived of their liberty, and other children whose identities are unknown because, for one reason or another, they have been separated from their biological parents.

217. On the subject of travel documents for minors, the Argentine Federal Police, which is responsible for issuing passports, has decided, pending the adoption of a new documents scheme, not to follow the option provided in Decree No. 2015/66, (art. 7), of including children under 5 on their parents' passports. This decision is consistent with the argument propounded by the International Civil Aviation Organization, namely that all travellers, including children under 5, should have their own passports. It is thus impossible to incorporate children fraudulently into adults' travel documents, making it harder to traffic in children or commit offences injurious to the free exercise of parental authority.

Registration of newborns

218. In accordance with current legislation, the persons who are under a duty to apply for registration of a birth are indicated in article 30 of Decree No. 8204/63 on the Civil Registry, namely:

(1) The father or mother or, in their absence, the closest relative;

(2) The administrators of hospitals, prisons, orphanages, etc. in the event of births occurring in such institutions which are not registered by the persons indicated in paragraph 1 above;

(3) Any person finding a newborn or in whose home a newborn has been found;

(4) The authority responsible for maintaining the Register of On-Board Incidents.

219. Application for local registration, article 28 of Decree No. 8204/66 notwithstanding, must be made within 40 days; in all cases where a child over 6 years of age is to be registered, a judicial decision is required.

220. To end the problem of unregistered and undocumented children, Act No. 24,755 was passed on 30 December 1996. This sought to simplify the task of registration. Parents were granted exemption from the fines they might otherwise have incurred for breaches of Act No. 17,671, in an amnesty running until 30 December 1997.

Procedures for the identification of newborns: Act No. 24,540

221. Congress passed Act No. 24,540 on 9 August 1995. This Act laid down criteria and procedures for establishing the identity of newborns and its regulations are in the process of formulation. For this purpose, the Ministry of the Interior's Under-Secretariat for Human and Social Rights has set up an advisory committee consisting of representatives of the National Commission on the right to Identity, the Ministry of Health's Directorate for Mother and Child Health, the National Institute of Medical Genetics, the Argentine Paediatric Society, the Committee on Health of the Chamber of Deputies, the Ministry of Justice, the City of Buenos Aires Legislature, the Argentine Federal Police and the National Register of Persons.

222. This committee has produced a draft law intended primarily to fill an important gap in the formal mechanisms and instruments for dealing with the identity of persons, and at the same time to provide an essential legal instrument establishing the inviolability of the mother-child relationship and ensuring the security and effectiveness of the identification procedures by means of the genetic fingerprint register. The draft law establishes the procedure for identification of minors and its implications for registration and family affiliation in order to guarantee all minors recognition of their identity and assure them holistic development and the right to belong to a family group and the right to a nationality.

223. The "genetic fingerprint" consists of blood samples from mother and child, which are stored in the Single Identification Card. This will have two originals, one of which will be kept in the Civil Registry and the other in the National Genetic Data Bank. In practice, the genetic fingerprint is a drop of the mother's blood and a drop from the child's umbilical cord on blotting paper.

224. It is also important to note that Argentine national legislation is establishing procedures and specific measures to combat domestic violence and for the ratification of the convention on the elimination of the exploitation of child labour.

225. Attention should also be drawn to the fruitful work carried out in Argentina by UNICEF since it set up here in 1985. The national and provincial governments and NGOs have thus benefited from its technical cooperation plans. The programme for Argentina, the master plan for operations in Argentina and its creative measures for communication and social mobilization were honoured by a staff award, Argentina being the first Latin American country to receive such a distinction.

226. In collaboration with UNICEF, the Argentine Government has managed to achieve the goals established at the World Summit for Children for the mid-1990s. These include: an increase in vaccination levels to 80 per cent or higher throughout the country; the elimination of polio; ensuring that at least 80 per cent of children aged under 2 receive adequate levels of vitamin A; a reduction in levels of severe or moderate malnutrition; and an increase in primary schooling.

Right to a nationality

227. Act No. 346 makes the following eligible for Argentinian citizenship:

(a) All persons who were or are born within the territory of the Republic, whatever their parents' nationality, except for children of foreign ministers and members of the diplomatic community resident in Argentina;

(b) Children of native Argentine citizens who, though born in another country, choose to take the citizenship of origin;

(c) Persons born in Argentine diplomatic missions and warships;

(d) Persons born in neutral waters under the Argentine flag.

228. Nationality is acquired regardless of the child's sex and whether or not he or she was born in wedlock. Thus, it is clear that the national legislation in force grants men and women equality in terms of the right to a nationality.

229. The regulations of this Act stipulate that the children of an Argentine-born father or mother shall have citizenship by right simply by establishing this fact. In the case of minors under 18 years of age with an Argentine-born father or mother who were not recognized as citizens by the State where the birth occurred, or who for some other reason were stateless, Argentine citizenship may be claimed for them by the person exercising parental authority, provided he proves that the minor meets the necessary conditions.

230. As examples of progress made in connection with enjoyment of the right to nationality, attention should be drawn to the following:

(a) Argentine legislation in force does not admit the loss or cancellation of Argentine nationality. Act No. 23,059 reinstates Act No. 346 (with the amendments introduced by Acts Nos. 16,801 and 20,835) and rescinds all other amendments, including those contained in Act No. 21,795 relating to cancellation and loss of nationality;

(b) The provisions of article 3 of the Act "declare invalid and without legal effect losses and cancellations of Argentinian nationality ... ordered under the articles ... of de facto Act No. 21,795 and those effected during the validity of de facto Act No. 27,610", while article 4 establishes that "persons affected by these measures have their Argentine nationality restored automatically upon the entry into force of the present Act";

(c) Act No. 24,533 introduces amendments to articles 10 and 11 of Act No. 346. This reform is of a technical nature aimed at speeding up the procedure for obtaining the citizenship card.

Right to a name

231. Article 1 of Act No. 18,248 establishes that every natural person shall have the right and the duty to use his or her given name and family name in accordance with the provisions of this Act.

232. Given name: This is acquired through the entry in the birth certificate. It is chosen by the parents or, if one of the parents is missing, prevented from attending or absent, by the other parent or the persons so authorized by the parents. Failing that, it may be chosen by the guardians, the Government Procurator for Juveniles or the officials of the Register of Civil Status and Capacity of Persons (art. 2).

233. Aboriginal names: The right to use aboriginal names or derivatives of indigenous and Latin American aboriginal words is guaranteed (Act No. 18,248, art. 3 bis).

Coming of age

234. The National Civil Code stipulates (in Title IX, art. 126), that "minors are persons who have not reached the age of 21 years". This is considered to be the age at which people acquire the generic capacity to exercise the rights which are enjoyed by the individual. Reference may also be made to the following articles:

> "Art. 128: The incapacity of minors ceases when majority is attained, on the 21st birthday, and through emancipation before attaining majority.
>
> From the age of 18, the minor may enter into an employment contract for a legal activity without the consent or authorization of his guardian, on condition that the provisions of labour law are

respected. A minor who has obtained a qualification for a profession may practise it independently without need for prior authorization.

In both these cases, the minor may manage and dispose freely of the assets he receives as a result of his work and have recourse to civil or criminal justice for claims relating to them.

Art. 129: The state of majority comprises, from its first day, competence to exercise all acts of civil life, without depending on any legal status or authorization from parents, guardians or judges.

...

Art. 131: Minors who enter into matrimony become emancipated and acquire civil capacity with the limitations laid down in article 134. (Persons who become emancipated may not, even with court authorization: (i) endorse the accounts of their guardians and wind them up; (ii) give away assets which they have received freely; (iii) stand surety for obligations.)

...

Art. 133: Emancipation attained through matrimony is irrevocable and gives the married couple competence to perform all acts of civil life, apart from those provided for in articles 134 and 135, even if the marriage is dissolved before the individuals come of age, and regardless of whether or not they have children. Nevertheless, the persons concerned shall be allowed to remarry only on coming of age".

Provisions and activities for the protection of children and young people

235. In accordance with the Convention on the Rights of the Child, the primary duty of the State is to "ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her". This obligation includes, among other things:

(a) Protecting the child against any form of physical or mental harm or abuse, neglect or negligent treatment, ill-treatment or exploitation, including sexual abuse;

(b) Fully recognizing the child's right to protection against economic exploitation and against any work which may be dangerous or hinder his or her education, or damage his or her health or physical, mental, spiritual, moral or social development;

(c) Adopting all measures to promote the physical and psychological recovery, and the social reintegration, of any child victim of abandonment, exploitation or abuse in an environment which fosters the child's health, self-respect and dignity.

236. The fact that the Convention is in force means that the Argentine State is required to pursue positive action in order to ensure the full observance

and highest level of enjoyment of the rights enshrined in the Convention. The Argentine State submitted its initial report under article 44 of the Convention on 17 March 1993.

237. The National Council for Children and the Family, a decentralized body, has responsibility for the functions incumbent on the State with regard to the all-round protection and promotion of children and the family. One of its major areas of activity is the prevention and management of child abandonment, coordinating in particular the help mechanisms for children at risk, living in the street, exploited at work or suffering any other impairment of their dignity.

238. Concerning the protection of children who have been abandoned or are in a state of moral or material danger, overlapping provincial and national jurisdiction over children found to be at risk has created a need to agree on coordinated care activities.

239. In the context of the Federal Agreement on Protection of Children and the Family, and through the Federal Council on this subject or bilateral agreements, the National Council for Children and the Family provides technical support in order that the commitments undertaken by Argentina may be fulfilled throughout the country, thus giving homogeneity and coherence to the actual rights of every child living here. Under the aegis of the National Council, and even before it was set up, the Street Children Programme has been executed, with the aim of providing individual care to children living in the streets.

240. A network of programmes and services targeted at the problem was set up in 1990 under Order No. 270/90. This is gradually being improved and can be drawn upon as needed by the Programme against Exploitation of Children.

241. By a decision of November 1993 the National Council for Children and the Family decided, in plenary session, to devote a specific programme to helping children exploited by adults in circumstances of begging, work, prostitution or crime, in the face of evidence that the great majority of children roaming the city streets were managed, compelled or supervised by adults living off the earnings from children's marginal activities.

242. Objectives of the programme: To identify cases of child exploitation, distinguishing these from survival strategies or other risk situations which require specific attention (work, mental health, cultural factors, town planning, etc.); to restrict and prevent, by all legal means, exploitative conduct on the part of adults; to provide exploited children and their families with the greatest possible support through specific or general social measures and programmes at the national, provincial or municipal level; to guarantee, in particular, access to education, physical and mental health, vocational training, leisure and culture for all child victims of exploitation; and to create a community awareness of the problem.

243. Programme measures: Without prejudice to such ad hoc measures as may be required on a flexible basis as a strategic response to exploitative behaviour, programme measures will fall into the following general categories: inter-agency coordination (public and non-governmental organizations with

expertise in the field); examination of cases (field study of the prevailing types of child exploitation, the adults involved and the child victims, costs being met by the programme); community awareness campaigns using mass publicity, seminars, courses, etc.; social intervention (technical and professional involvement for diagnosis and treatment, both for the children and for families who voluntarily enrol in the programme); involvement of the public prosecutor's office and the competent courts (in cases requiring legal measures to deal with situations of exploitation, to arrest and try exploiters, or to remove children from their families, action will be taken by authorized officials); safeguarding of exploited children (in cases where children continue to be exploited at work despite the social measures taken, the Council will take the necessary protective measures to prevent the situation continuing, either by court order or through its own powers for protection of children at risk).

244. Programme resources: Community resources, which include permanent personnel and volunteers under their supervision; donations in kind will be accepted for direct transfer to children and their families; if the donations cannot be distributed directly to programme beneficiaries, the procedure outlined in the current provisions for donations to the State will be followed. Concerning inter-agency resources, a list of existing human resources will be compiled - and updated, expanded and improved through field research - in other national, provincial or municipal public institutions, available to children and their families. As to the specific resources of the Programme to Combat the Exploitation of Children they include specially trained staff, help points, 24-hour telephone help lines, essential vehicles, emergency allocations for food, clothing, footwear, medicines, items and equipment, transport and anything else needed by exploited children or their families when they cannot be provided immediately by the ordinary programmes, transit centres (public or non-governmental) which accept children immediately for short stays, meeting daily expenses, etc.

245. The national legislative instrument on matters relating to minors (Act No. 10,903), which amended the parental authority regime, constitutes a guarantee of a minor's right not to be subjected to abuse and exploitation. This Act is being analysed, since some of its clauses may be subject to modification because considerable time has passed since its entry into force and new problems are affecting the group whom it protects.

Age limits for paid work

246. The labour provisions relating exclusively to the prohibition of paid work by minors are laid down in the Labour Contract Act (No. 20,744):

> "Art. 189:
>
> The employment of juveniles under 14 years of age in any type of activity, whether for profit or not, is prohibited. Where the Ministry responsible for the interests of young persons so authorizes, this prohibition shall not apply to juveniles employed in undertakings where only members of the same family work, provided that the activities are not harmful, deleterious or dangerous. A young person over the age indicated above may not be employed if he is of school age and has not

completed his compulsory schooling, save where the Ministry responsible for the interests of young persons has given express authorization on the grounds that the young person's work is deemed to be indispensable for his maintenance or for that of his immediate relatives, provided that he satisfactorily completes the minimum period of compulsory schooling."

247. Working minors aged from 14 to 18 have specific types of protection under the Act:

"Art. 188:

Employers, on hiring workers of either sex aged under the age of 18, shall require them or their legal representatives to supply a medical certificate stating that they are fit to work and ensure that they undergo the periodic medical examinations as provided for by the relevant regulations."

248. The requirement in this provision for a medical certificate does not affect the other precautions required by other provisions, be they for recruitment or the start of employment or for the continuation of the employer-employee relationship. Thus, article 35 of Decree-Law No. 14,538/44, extended to cover all work permit applications by minors aged under 18, establishes that, at both the initial medical examination and the requisite periodic examinations, the physical condition of the young worker must be taken into account and related to the nature, forms and characteristics of the tasks on which he will be or is working and the influence of these, compared to the ideal, in terms of his physical, mental and moral health. This should all be ascertained by the necessary psycho-physical and psycho-technical tests. The fitness test should note the health and safety conditions of the place, to be examined in every case, in which the young person performs his work, and likewise the equipment he is required to use. All these measures go far beyond the mere contractual relationship: the law simply covers the requirements for formation of the contract (in terms of fitness for work) or its continuation, whereas the other measures provided for in the regulations referred to in the final paragraph of article 188 relate to health policy and the protection and improvement of human resources, a central theme in such areas as labour law, public health and social security.

249. The provisions in force state that a young person's period of work may not exceed 6 hours a day or 36 hours a week. Young persons over 16 may, with the prior authorization of the administrative authority, work for 8 hours a day or 48 hours a week.

250. The same legislation states that young persons may not be employed on night work, i.e. work during the period between 8 p.m. and 6 a.m., in the case of manufacturing establishments performing work in three daily shifts covering 24 hours a day; the period of total prohibition of the work of young persons is governed by the same provisions.

Article 25

251. The Constitution stipulates as follows:

"Art. 16: All inhabitants are equal before the law, and admissible to employment without any condition other than ability.

...

Art. 37: Actual equality of opportunities for men and women with regard to access to elective and party office shall be guaranteed by means of positive actions in the regulation of political parties and in the electoral system.

...

Art. 48: In order to be a deputy it is necessary to have attained the age of 25, to have four years of active citizenship; and to be a native of the electing province or to have two years of current residence in that province.

...

Art. 55: In order to be elected senator, the following requirements must be met: have attained the age of 30, have six years' Argentine citizenship, have an annual income of 2,000 strong pesos or its equivalent, and be a native of the electing province or have two years of current residence in that province.

...

Art. 89: In order to be elected President or Vice-President of the Nation, it is necessary to have been born in Argentine territory, or to be the son of a native-born citizen if born in a foreign country; and to have the other qualifications required for election as senator."

252. Without prejudice to the provisions of the Constitution, mention was made in the information relating to article 3 of Act No. 24,012, which provides for effective representation of women in the lists of candidates presented by political parties for elective office.

National electoral legislation

253. National electoral legislation comprises the following enactments: Decree No. 2,135 of 18 August 1983 (see annex), approving the final text of the National Electoral Code (Act No. 19,945, as amended by Acts Nos. 20,175, 22,838 and 22,864).

254. In accordance with article 1 of the Code, the electorate consists of citizens of both sexes, native-born, naturalized, or citizens by right, aged over 18 years and without any of the disqualifications provided for in the Code.

255. Article 2 lays down exclusions from the electoral register. With regard to the situation of unconvicted and convicted prisoners, paragraphs (d) to (k) set the duration of their disqualification from voting. The repeal of these provisions is at present under consideration by the Procurator for Prisons.

256. Regarding the disqualification of deaf and dumb persons who are unable to express their wishes in writing, and with reference to the Committee's general comment 25 (para. 10), it is important to realize that the reason for this exclusion is the impossibility of discovering the true wishes of the persons in question.

257. Article 84 of the Code provides for the voting procedure and for the admissibility criteria which have to be satisfied. These criteria constitute clear guidelines and should not be regarded as restricting the possibility of participation.

258. The electoral record of the Argentine Republic clearly demonstrates that no large-scale fraud or problems have occurred in the various elections that have taken place.

259. Act No. 23,168 of 1984 amended articles 25 and 26 of the National Electoral Code. Act No. 23,476 of 1985 replaced articles 5 and 10 of the Political Parties Organization Act (No. 23,298) and articles 25, 26 and 32 of the National Electoral Code.

260. Article 1 of Act No. 23,298 (see annex) guarantees citizens the right of association for political purposes and the right to join democratic political parties. It also lists the requirements for setting up political parties:

(a) A group of citizens united by a permanent political bond;

(b) A stable organization and operation regulated by the organizational instrument, in accordance with internal democratic methods, including periodic elections of officers, party organs and candidates, in the form established by each party;

(c) Judicial recognition of its legal-political status as a party, as contained in its entry in the appropriate Public Register.

261. In addition to the above, there are various instruments which help provide the various political parties with opportunities for participation. These include some which contribute towards enabling recognized political groupings to fulfil requirements of their organizational instruments and to bear the printing costs of ballot papers (Decrees Nos. 1682/93 and 1683/93 respectively). Provision is also made for a State contribution per vote (Decree No. 568/92).

262. Act No. 24,007 of 1991 established the Register of Electors Resident Abroad (see annex). Act No. 24,012 of 6 November 1991 established a quota for women candidates in party electoral lists. The passing of this Act was supported by the presidents of the main parties. To ensure compliance with the Act, the Executive issued the consequent regulations in March 1993.

263. The elections held in Argentina since 1983 have taken place without major difficulties. While voting is compulsory, the percentage of the electorate voting is very high because of public enthusiasm for democratic participation.

264. Thus, 1989 was the first time in more than 20 years that a constitutional president was able to assume power. President Raúl Alfonsín, of the Radical Civic Union, handed over the presidency to President Carlos Saúl Menem of the then opposition Justicialist Party. He was re-elected to office following a constitutional reform agreed among the main political parties, which gained great public support.

265. Provincial governorship elections were held in 1991; 1993 saw the election of national deputies and 1994 elections to the Constituent Assembly for the constitutional reform, which entered into force in August of that year; general elections were held in 1995; the Head of Government of the Autonomous City of Buenos Aires was elected in 1996; and on 26 October 1998, elections were held in order to renew the membership of the Chamber of Deputies and for membership of the City of Buenos Aires legislature.

266. It should be pointed out that Act No. 23,510 granted foreigners entered in the City of Buenos Aires register of foreign electors the right to vote in city council elections. In order to exercise this right, foreigners formerly needed to have their names entered in a special register in the Ministry of the Interior's Under-Secretariat for Institutional Affairs.

Head of Government of the Autonomous City of Buenos Aires

267. Formally, the first initiative for the establishment of the Constituent Assembly of the City of Buenos Aires was taken in the text of the new Constitution, reformed in 1994 in the city of Santa Fé. In reality, the city's autonomy had long been an aspiration of its people, and this began to grow with the return to democracy in 1983.

268. The powers of the city governor appointed by the National Executive were first defined in 1883 through Act No. 1260, which established the new form of municipal government with a governor appointed by the President in agreement with the Senate and a Deliberating Council made up of 30 elected lawmakers.

269. In 1883, Torcuato de Alvear was appointed by President Julio Argentino Roca as the first major of the City of Buenos Aires. However, it would be another 111 years before the inhabitants of the capital would have an opportunity of electing their Head of Government by popular will as provided for on paper.

270. This took place when the reformist members of the Constituent Assembly adopted article 129 of the new Constitution which stated:

> "The City of Buenos Aires shall have an autonomous system of government, with its own legislative powers and jurisdiction; its head of government shall be elected directly by the people of the city ... Within the framework of the provisions of this article, the National Congress shall

summon the inhabitants of the City of Buenos Aires to issue, through the representatives they elect for this purpose, the Organizational Statute of the city's institutions."

271. In December 1995, between demonstrations and counter-demonstrations, and while the opposition parties were demanding that the Government call urgent elections, Parliament passed the so-called "Calling of Elections Act" (No. 24,620), which summoned "the inhabitants of the City of Buenos Aires to elect a Head and Deputy Head of Government and 60 representatives to issue the Organizational Statute of the city's institutions, as laid down by article 129 of the Constitution".

Tierra del Fuego, Antarctic and South Atlantic Islands

272. The far-reaching modification of this territory's political status was given definition on 10 January 1992; up to then, it had been the last Argentine territory to be governed by a Delegate of the President. The institutional transformation stage was initiated with the sanction of Congress in Act No. 23,775, which created the new Province, and continued with the issuing of the Provincial Constitution, reaching completion on the above date when the first authorities directly elected by the people of the region took office.

Participatory democracy

273. As is well known, participatory democracy does not end with the election of authorities. The Argentine Constitution provides for various types of participation:

(a) The so-called right of initiative, which allows citizens to present draft legislation to the Chamber of Deputies, which is required to deal specifically with it within 12 months (Constitution, art. 39, regulated by Act No. 24,747, which is annexed);

(b) On the initiative of the Chamber of Deputies, Congress may order a referendum on a particular bill. The bill may not be vetoed by the President. With the affirmative vote of the people, the bill will become law and its promulgation will be automatic (Constitution, art. 40);

(c) Congress or the President, according to their respective powers, may call a non-binding popular referendum. In this case voting will not be compulsory (Constitution, art. 40).

274. Nor is participatory democracy limited to the existence and exercise of the mechanisms mentioned. Citizens participate in the democratic process, and contribute to its construction and maintenance by other means also. An example is the formation of civil organizations of all types.

275. Since the return to democracy, Argentina has seen the establishment of a large number of institutions of different types, impact and method of functioning. Their common feature is that they open up new channels for

participation in public life. The State, for its part, guarantees the full freedom of action of these organizations, which are constrained only by considerations of security and the common good.

Article 26

276. The principle of equality before the law emerges clearly from the information provided under each of the preceding articles.

Article 27

Indigenous populations

277. The reform of the Constitution was of particular importance for the indigenous populations. In this connection, there was considerable participation by these populations in the drafting of Act No. 24,309 declaring the need for reform. This had invaluable results for the process of "highlighting" the issue of aboriginals and transforming the situation.

278. Thus, in the Declaration they presented in October 1993, the indigenous peoples affirmed:

> "We are representatives of the Colla, Tapiete, Wichi, Pilaga, Toba, Mocovi, Mapuche, Chane and Chiriguano indigenous peoples [and wish] to demand, as primordial peoples who have always lived in Argentina, ... in addition to the rights to which we are entitled, the recognition of Argentina as a multi-ethnic and multicultural country."

279. As a result of this first initiative, the Need for Reform Act (art. 3, clause LL) provided for "the adaptation of the constitutional texts in order to safeguard the ethnic and cultural identity of the indigenous peoples". This led to amendment of the provisions which, in the 1853 Constitution, made it the responsibility of Congress to "ensure the security of the frontiers, maintain the peaceful relationship with the Indians, and promote their conversion to Catholicism".

280. The task of the National Constituent Assembly was defined in the text of the present article 75, paragraph 17:

> "It is the responsibility of Congress: ... ;
>
> To recognize the ethnic and cultural primordiality of the indigenous Argentine peoples;
>
> To ensure respect for identity and the right to bilingual and intercultural education; to recognize the legal status of indigenous communities, and community possession and ownership of the lands they occupy by tradition; to regulate the assignment of other lands appropriate and sufficient for human development, all of which shall be inalienable, non-transferable, and exempt from taxes and confiscation;

To ensure the indigenous peoples' participation in the management of their natural resources and in the other issues affecting them. These responsibilities may be exercised concurrently by the provinces."

281. Attention should also be drawn not only to the list of the main aboriginal rights, but also to the express recognition of the primordiality of the indigenous peoples in relation to the creation of the national State and the provincial States, a telling argument in the struggle for legal recognition of the aboriginal peoples.

282. This constitutional reform places in a new context the Indigenous Policy and Support for the Aboriginal Communities Act (No. 23,302) and the provincial legislation on the subject. Notable in the latter category are the Integrated Act relating to the Aborigine (No. 426) of the Province of Formosa, passed in October 1984, which provides for the establishment of the Aboriginal Communities Institute; the Aboriginal Advancement and Development Act (No. 6,373 of 1987) of the Province of Salta; Act No. 3,258 of 1987 relating to the Improvement of the Living Conditions of the Aboriginal Communities and the establishment of the Chaqueño Aboriginal Institute; and the laws of the provinces of Misiones, Río Negro, Chubut and Santa Fé.

283. Among the activities carried out for the strengthening and development of indigenous communities' cultures was the publication and free distribution, in June 1996, of the third edition of the Guaraní Grammar. This publication, by the Ministry of Culture and Education, symbolizes the Argentine State's commitment to the survival of the indigenous peoples' cultural identities, the deepening of their historical awareness and their strong desire for integration.

284. At the international level, Argentina is actively participating in all forums at which the issue of indigenous peoples is considered, particularly at the inter-American level, where it has made considerable contributions to the draft Inter-American Declaration on Indigenous Peoples. It is also a member of the Development Fund for the Indigenous Peoples of Latin America and the Caribbean, with a seat on the governing body.

285. Census information on Argentina's indigenous inhabitants gives a figure of 450,000 to 550,000, belonging to 16 ethnic groups spread over 12 provinces and representing 1.5 per cent of the total population.

286. The National Plan for the Indigenous Communities was launched by President Menem on 25 October 1996 in Cushamen, Province of Chubut. At the same time, he announced the transfer to the Mapuche communities of 250,000 hectares of land. Delimitation is currently under way to ensure that this land is inalienable, non-transferable, and exempt from tax or confiscation.

287. The first stage of the Plan comprises three basic courses of action:

(a) The restitution of the land occupied by the indigenous communities and other land suitable for development through a measurement and assistance

plan financed by the National Institute for Indigenous Affairs and implemented by the provinces. Almost 600,000 hectares have already been measured and the measurement of a further 1.5 million hectares is planned;

(b) Legal recognition of indigenous organizational structures and government;

(c) The design of an educational programme to strengthen the identities of the indigenous communities, enabling cultural barriers to be overcome and facilitating indigenous access to State and other social and economic programmes, aimed primarily at developing bilingual and intercultural education, the training of bilingual indigenous teachers, and vocational training for members of indigenous communities.

288. In addition to allocations from the national budget, the Plan has a special credit of $5 million granted by the Inter-American Development Bank. Additionally, a $5 million holistic development programme agreed with and supported by the European Union has been set up for the Ramón Lista region of Formosa. This region has the highest level of unmet basic needs and the larger part of the Wichi population lives there.

289. Those provinces with indigenous populations have made progress both in legislation and in caring for their communities. Particular emphasis should be placed on the achievements of Formosa in the north of Argentina, which, in addition to working in conjunction with Federal Government programmes for the advancement and development of indigenous communities, has given land titles to all the communities living in the province. Over 400,000 hectares have been given over into full ownership. The governments of the neighbouring provinces of Chaco and Misiones are also close to regularizing the ownership status of the lands inhabited by all their indigenous communities.

290. In March 1997, the President of Argentina transferred lands to members of the Colla community in the Province of Salta. The 125,000 hectares in question belonged to the "Santiago Estate" and were privately acquired by the Argentine State for the benefit of the 3,000-strong indigenous population.

291. Despite these moves, conflicts continue in Argentina over lands historically occupied by indigenous communities. The State, the provinces and the specialized bodies are making great efforts to settle these conflicts in order effectively to guarantee the full realization of the rights recognized.

292. The Social Education Plan has been put into effect for the application and implementation of special programmes and the provision of elements and mechanisms needed to produce "a better education for all". Under this Plan a study has been made since 1993 of the problems of the indigenous communities and the question how to adapt special programmes to give them better access to education and continuous enrolment in educational establishments while respecting the cultural principles of each community.

293. As a result of the ongoing task of identifying significant experience, it is planned to set up special programmes for a wide range of purposes from the preservation of cultural norms to the teaching of indigenous languages.

294. The progress made in these studies and its significance for the Government led to the implementation within this framework, as from 1997, of Project 4 (Assistance to Schools with Aboriginal Pupils). At present, this project covers some 800 schools with a total of 30,000 pupils: in the special circumstances of the indigenous communities, the school population ranges in age from 5 to 17.

295. The National Institute for Indigenous Affairs, supporting the initiatives of the Ministry of Education, has awarded 776 scholarships to students in secondary and university education in order to promote the training of indigenous teachers and ensure their enrolment. The purpose is to make available within the next few years primary-school teachers who know indigenous language and culture in order to ensure that education is truly bilingual and intercultural.

Religious minorities

296. In accordance with the information relating to article 18 contained in the present report, freedom of religion is fully guaranteed to all persons residing in the Argentine Republic.

Linguistic minorities

297. In Argentina, the linguistic minorities are represented by the various indigenous communities. Thus, the measures described above, both legal and action-oriented, constitute a guarantee of their rights.